रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 14] नई दिल्ली, मार्च 30—अप्रैल 5, 2014, शनिवार/चैत्र 9—चैत्र 15, 1936
No. 14] NEW DELHI, MARCH 30—APRIL 5, 2014, SATURDAY/CHAITRA 9—CHAITRA 15 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 मार्च, 2014

का.आ. 1105.—केन्द्र सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना द्वारा संस्थापित आरसी 4 (एस)/2010-एससीबी/एमयूएम. (सोहराबुद्दीन शेख मुठभेड मामला), आरसी 3 (एस)/2011-एससीबी/एमयूएम (तुलसी प्रजापति मुठभेड मामला) आर सी 3 (एस)/2011- एससीबी/ डी एल आई(सादिक जमाल मुठभेड मामला) तथा आर सी 5 (एस)/2011-एससीबी/एमयूएम.(इशरत जहां मुठभेड मामला) में तथा अपीलों, पुनरीक्षणों अथवा इससे सम्बद्ध या इसी संव्यवहार के अन्य मामलों में नई दिल्ली स्थित भारत के माननीय उच्चतम न्यायालय के समक्ष केन्द्रीय अन्वेषण ब्यूरो की तरफ से उपस्थित होने के लिए श्री सुब्रमन्यम प्रसाद एवं श्री माहीन प्रधान, अधिवक्ताओं को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/5/2014-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 20th March, 2014

S.O. 1105.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Subramonium Prasad, and Shri Maheen Pradhan, Advocates as Special Public Prosecutor for appearing on behalf of Central Bureau of Investigation in RC 4/(S)/2011-SCB/MUM. (Sohrabuddin Sheikh Encounter case), RC 3/(S)/2011-SCB/MUM.(Tulsi Prajapti Encounter Case), RC 3/(S)/2011-SCB/DLI.(Sadiq Jamal Encounter Case) and RC 4/(S)/2011-SCB/MUM.(Ishrat Jahan Encounter Case) instituted by the Delhi Special Police Establishment before the Hon'ble Supreme Count of India at New Delhi and appeals, revisions or other matter connected therewith and incidental thereto.

[F. No. 225/5/2014-AVD-II]

RAJIV JAIN, Under Secy.

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 31 मार्च, 2014

का.आ. 1106.—राष्ट्रपति, दिनांक 27 मार्च, 2014 से श्री के. सी कौशिक, अधिवक्ता का भारत के अपर महासालिसिटर के पद से त्यागपत्र स्वीकार करते हैं ।

[फा. सं. 18(9)/2012-न्यायिक]

आर. एस. शुक्ल, संयुक्त सचिव एवं विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 31st March, 2014

S.O. 1106.—The President is pleased to accept the resignation of Shri K. C. Kaushik, Advocate as Additional Solicitor General of India with effect from 27th March, 2014.

[F. No. 18(9)/2012-Judl.]

R.S. SHUKLA, Jt. Secy.& Legal Adviser

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा अनुभाग)

नई दिल्ली, 26 मार्च, 2014

का.आ. 1107.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987, 2007 तथा 2011) के नियम 10(04) के अनुसरण में मुख्य महाप्रबंधक (अनुरक्षण), पश्चिमी दूरसंचार क्षेत्र, मुम्बई के अंतर्गत उपमहाप्रबंधक, अनुरक्षण, पश्चिमी दूरसंचार क्षेत्र, जबलपुर कार्यालय, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है , को एतद्द्वारा अधिसूचित करती है।

2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से लागू होगी ।

[सं. ई-11016/01/2009-राजभाषा]

सुरेश चन्द्र शर्मा, उप महानिदेशक (सी. एण्ड ए.)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

New Delhi, the 26th March, 2014

S.O. 1107.—In pursuance of rule 10(4) of the Offical Languages (use for official purpose of the Union) Rules, 1976 (as amended 1987, 2007 and 2011), the Central Government hereby notifies the office of the Deputy General Manager (Maintenance), West Telecom Circle, Jabalpur under the administrative contral of Chief General Manager (Maintenance), West Telecom Circle, Mumbai, where more than 80% staff have acquired working knowledge of Hindi.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[No. E-11016/1/2009-O.L.]

SURESH CHANDRA SHARMA, DDG (C.&A)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 14 मार्च, 2014

का.आ. 1108.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं।

अनुसूची

क्रम सं.	लाइसेंस सं	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पत्ता	भारतीय मानक का शीर्ष	भा मा सं (भाग/अनुभाग) वर्ष
(1)	(2)	(3)	(4)	(5)	(6)
1.	4695081	20140203	मैसर्स नवीन इंडस्ट्रीस दरवाजा सं. 135-ए, 6वाँ सडक, वरदराजालु नगर, ब्लॉक ई. बी. कॉलोनी, गणपति, कोयम्बत्तूर-641006	निम्मजनीय पम्पसेट	IS 8034 : 2002

(1)	(2)	(3)	(4)	(5)	(6)
2.	4695889	20140204	मैसर्स अल्फा इंजीनियरिंग इंडस्ट्री, सं. 2 ए, 6वाँ क्रास, वी. के. रोड, तन्नीर पन्दल, पीलमेडु, कोयम्बत्तूर-641004	निम्मजनीय पम्पसेट	IS 8034 : 2002
3.	4697893	20140210	मैसर्स श्री गणपति फूड्स एस एफ सं. 73/3ए, गंगा नगर एक्स्टेन्शन के सामने, मेर्कला तोट्टम, पल्लडम ब्लॉक, गणपतिपालयम पोस्ट, कोयम्बत्तूर-641605	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
4.	4697792	20140211	मैसर्स शक्ति विनायगा मिल्स 73, पुदु वलसु, लक्कापुरम, ईरोड-638002	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
5.	4699796	20140213	मैसर्स माही इंजीनियरिंग प्राईवेट लिमिटेड यूनिट-1 28, अम्मन कुलम रोड, पी. एन. पालयम, कोयम्बत्तूर-641037	स्वच्छ ठंडे पानी के लिए अपकेन्द्रीय पुनरुत्पादक पम्प	IS 8472 : 1998
6.	4705664	20140224	मैसर्स ए.एस. वायर टेक्नोलोजी 155/2, कुप्पेपालयम, शेन्बगा-गौन्डन पुदुर, अन्नूर पोस्ट, अन्नूर ब्लॉक, कोयम्बत्तूर- 641 107	पैकेजबंद पेय जल (पैकेजबंदमिनरल जल के अलावा)	IS 14543 : 2004

[सं. सीएमडी/13 : 11]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 14th March, 2014

S.O. 1108.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/Sec./Year
(1)	(2)	(3)	(4)	(5)	(6)
1.	4695081	20140203	M/s. Navin Industries D.No. 135-A, 6th Street, Varadharajulu Nagar, Block E.B. Colony, Ganapathy, Coimbatore-641006	Submersible Pumpsets	IS 8034 : 2002

(1)	(2)	(3)	(4)	(5)	(6)
2.	4695889	20140204	M/s. Alfaa Engineering Industry No. 2A, 6th Cross, Thaneerpandal, V.K. Road, Peelamedu, Coimbatore-641004	Submersible Pumpsets	IS 8034 : 2002
3.	4697893	20140210	M/s. Sree Ganapathy Foods SF. No. 73/3a, Opp. Ganga Nagar Extn, MerkalaThottam, Palladam Block, Ganapathypalayam (P.O.), Coimbatore-641605.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
4.	4697792	20140211	M/s. Sakthi Vinayagaa Mills 73 Pudu Vallasu Lakkapuram, Erode-638002	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS14543: 2004
5.	4699796	20140213	M/s. Mahee Engineering Private Limited, Unit-1 28, Amman Kulam Road P.N. Palayam, Coimbatore-641 037	Centrifugal Regenerative Pumps for clear, cold water	IS 8472 : 1988
6.	4705664	20140224	M/s. A.S. Water Technology 155/2, Kuppeapalayam, Shenbhagounden Pudur, Annur Post, Annur Block, Coimbatore- 641 107	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004

[No. CMD/13:11]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 14 मार्च, 2014

का.आ. 1109.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	भा मा सं (भाग/ अनुभाग) : वर्ष
1.	4698693	20140212	मैसर्स श्री कन्दवेल ज्वेलर्स 73, ईश्वरन कोविल स्ट्रीट, पूकडै कॉर्नर, तिरूप्पुर-641604	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी	IS 1417 : 1999

[सं. सी एम डी/13:11]

एम. संदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 14th March, 2014

S.O. 1109.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No./Part/Sec./Year
1.	4698693	20140212	M/s. Sri Kandavel Jewellers 73, Easwaran Kovil Street, Pookadai Corner, Tiruppur-641604	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking	IS 1417 : 1999

[No. CMD/13:11]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 14 मार्च, 2014

का.आ. 1110.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियमन 5 के उपनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/स्थगित कर दिया गया है :

अनुसूची

क्र. सं.	लाईसेंस सं सी एम/एल.	लाईसेंसधारी का नाम व पता	स्थगित किए गए/रद्द किए गए लाईसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
1.	4544969	मैसर्स आदित्या मलर विल्डर्स एण्ड प्रोपर्टी डेवलेपर्स प्रायवेट लिमिटेड 999/4, अम्बेडकर सदुक्कम, अरिवोली नगर, मदुक्करै ब्लॉक, मदुक्करै गॉव, कोयम्बत्तूर (दक्षिण) तालुक, कोयम्बत्तूर-641015	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा) IS 14543 : 2004	18-02-2014

[सं. सी एम डी/13:13]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 14th March, 2014

S.O. 1110.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the grant of licence particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licence CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standard covered by the licence cancelled/suspension	Date of Cancellation
1.	4544969	M/S. ADITHYA MALAR BUILDERS & PROPERTY DEVELOPERS PVT. LTD. 999/4, AMBEDKAR SADUKKAM, ARIVOLINAGAR, MADUKARAI BLOCK, MADUKKARAI VILLAGE, COIMBATORE (SOUTH) TALUK, COIMBATORE-641015	Packaged Drinking Water (Other than Packaged natural mineral water) IS 14543 : 2004	18-02-2014

[No. CMD/13:13]

M. SADASIVAM, Sceentist 'F' & Head

नई दिल्ली, 18 मार्च, 2014

का.आ. 1111.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं ।

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक (कों) जो कि रद्द होने वाले है, अगर है, की संख्या वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 10 (भाग 2) : 2013 प्लाईवुड की चाय-पेटियां- विशिष्टि भाग 2 प्लाईवुड (छठा पुनरीक्षण)	15 मार्च, 2014	आई एस 10 (भाग 2) : 1996 प्लाईवुड की चाय-पेटियां विशिष्ट भाग 2 प्लाईवुड (पांचवा पुनरीक्षण)	15 मार्च, 2014
2.	आई एस 7836 : 2013 खाने योग्य कम-वसा सोया आटा - विशिष्ट (पहला पुनरीक्षण)	15 मार्च, 2014	आई एस 7836 : 2013 विशिष्ट खाने योग्य कम - वसा सोया आटा	15 मार्च, 2014
3.	आई एस/आई एस ओ/टी आर 11360 : 2010 नैनों प्रौद्योगिकी - नैनों सामग्रियों का वर्गीकरण एव श्रेणीकरण का रीतिविज्ञान	15 मार्च, 2014	—	—
4.	आई एस 13252 (भाग 22) : 2013 सूचना प्रौद्योगिकी उपस्कर - सुरक्षा भाग 22 बहिरंग उपस्कर स्थापित करना	15 मार्च, 2014	—	—
5.	आई एस 13252 (भाग 23) : 2013 सूचना प्रौद्योगिकी उपस्कर - सुरक्षा भाग 23 बड़े स्तर पर आंकड़ा संचायक उपस्कर	15 मार्च, 2014	—	—
6.	आई एस 14202 (भाग 1) : 2013 पहचान कार्ड्स - एकीकृत परिपथ कार्ड्स भाग 1 सम्पर्क सहित कार्ड्स - भौतिक लक्ष्य दूसरा (पुनरीक्षण)	15 मार्च, 2014	—	—
7.	आई एस 14202 (भाग 2) : 2013 पहचान कार्ड्स - एकीकृत परिपथ कार्ड्स भाग 2 सम्पर्क सहित कार्ड्स - सम्पर्कों का विस्तार और अवस्थित (दूसरा पुनरीक्षण)	15 मार्च, 2014	—	—

(1)	(2)	(3)	(4)	(5)
8.	आई एस 15109 (भाग 2) : 2014 मृदा की गुणता- मृदा वनस्पतिजात पर प्रदूषकों का प्रभाव ज्ञात करना भाग 2 उच्चतर पादकों के अंकुरण एवं आरम्भिक वृद्धि पर संदूषित मृदा का प्रभाव (पहला पुनरीक्षण)	15 मार्च, 2014	आई एस 15109 (भाग 2) : 2000/आई एस ओ 11269-2 : 1995 मृदा की गुणता - मृदा वनस्पतिजात पर प्रदूषकों का प्रभाव ज्ञात करना भाग 2 उच्चतर पादकों के अंकुरण एवं आरम्भिक वृद्धि पर संदूषित मृदा का प्रभाव	
9.	आई एस 16132 : 2013 तंबाकू एवं तंबाकू उत्पाद - एल्कालायड की मात्रा ज्ञात करना - स्पेक्ट्रोमीटरी पद्धति	15 मार्च, 2014	—	—
10.	आई एस 16138 : 2013 खुले प्रणाल में द्रव प्रवाह का मापन - इलेक्ट्रोमैगनेटीक करेंट मीटरों के डिजाइन, चयन एवं उपयोग	15 मार्च, 2014	—	—
11.	आई एस 16140 : 2013 चट्टान बेधन उपकरण - पर्क्यूसिव ड्रिलिंग के लिए टेपर कनेक्शन सहित ड्रिल रॉड	15 मार्च, 2014	—	—
12.	आई एस 16141 : 2013 पायरीप्रोक्सीफेन, तकनीकी - विशिष्ट	15 मार्च, 2014	—	—
13.	आई एस 16145 : 2013 फिप्रोनिल निस्पंदित सांद्र (एस सी) - विशिष्टि	15 मार्च, 2014	—	—
14.	आई एस 16147 : 2013 कैराजीनन, खाद्य ग्रेड - विशिष्टि	31 मार्च, 2014	—	—
15.	आई एस 16150 (भाग 1) : 2014 मत्स्य आहार - विशिष्टि भाग 1 कार्प आहार	15 मार्च, 2014	—	—
16.	आई एस 16150 (भाग 2) : 2014 मत्स्य आहार - विशिष्टि भाग 2 कैटफिश आहार	15 मार्च, 2014	—	—
17.	आई एस 16150 (भाग 3) : 2014 मत्स्य आहार -विशिष्टि भाग 3 समुद्री श्रिम्प आहार	15 मार्च, 2014		

(1)	(2)	(3)	(4)	(5)
18.	आई एस 16150 (भाग 4) : मत्स्य आहार-विशिष्टि भाग 4 मीठे पानी के झींगे (मैक्रोब्रेकियम रोसेनबर्गी) का आहार	15 मार्च, 2014	—	—
19.	आई एस 16171 : 2014 विनियर परतदार लम्बर-विशिष्टि	15 मार्च, 2014	—	—
20.	आई एस 16186 : 2014 वस्त्रादि - 50 किग्रा. खाद्यात्र पैक करने के लिये हल्के भार वाले पटसन के बोरे - विशिष्टि	15 मार्च, 2014	—	—
21.	आई एस/आई एस ओ 80000-1 : 2009 मात्रा एवं इकाइयां भाग 1 सामान्य	15 मार्च, 2014	आई एस 1890 (भाग 0) : 1995 मात्राएं और इकाइयां भाग 0 सामान्य सिद्धान्त (पहला पुनरीक्षण) आई एस आई इकाइयां और उनके गुणांकों तथा कुछ अन्य इकाइयों के प्रयोग की सिफारिशें (दूसरा पुनरीक्षण)	
22.	आई एस/आई एस ओ 80000-2 : 2009 मात्रा एवं इकाइयां भाग 2 प्राकृतिक विज्ञान तथा प्रौद्योगिकी में प्रयुक्त होने वाले गणितीय चिन्ह तथा प्रतीक	15 मार्च, 2014	आई एस 1890 (भाग 11) : 1995 मात्राएं और इकाइयां भाग 11 भौतिक विज्ञानों और प्रौद्योगिकी में प्रयुक्त गणितीय चिन्ह और प्रतीक (दूसरा पुनरीक्षण)	
23.	आई एस/आई एस ओ 80000-3 : 2006 मात्रा एवं इकाइयां भाग 3 अन्तराल तथा समय	15 मार्च, 2014	आई एस 1890 (भाग 1) : 1995 1995 मात्राएं और इकाइयां भाग 1 अन्तराल और समय (तीसरा पुनरीक्षण)	

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली -110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं । भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनैट पर खरीदा जा सकता है ।

[संदर्भ पीयूबी/जीएन-1]

कला एम. वरियर, निदेशक (विदेशी भाषाएं एवं प्रकाशन)

New Delhi, the 18th March, 2014

S.O. 1111.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 10 (Part 2): 2013 Specification for plywood tea-chest: Part 2 Plywood (Sixth Revision)	15 March, 2014	IS 10 (Part 2): 1996 Specification for plywood tea-chest: Part 2 Plywood *(Fifth Revision)*	15 March, 2014
2.	IS 7836 : 2013 Edible low-fat soya flour-Specification (first revision)	15 March, 2014	IS 7836 : 1975 Specification edible low-fat soya flour	15 March, 2014
3.	IS/ISO/TR 11360 : 2010 Nanotechnologies-Methodology for the classification and Categorization of Nanomaterials	15 March, 2014	NA	NA
4.	IS 13252(Part 22) : 2014 Information technology-safety-Part 22: Equipment to be installed outdoors	15 March, 2014	NA	NA
5.	IS 13252 (Part 23) : 2014 Information technology-safety-Part 23: Large data storage equipments	15 March, 2014	NA	NA
6.	IS 14202(Part 1) : 2014 Identification cards-Integrated circuit cards-Part 1 : Cards with contacts-Physical characteristics (Second) Revision)	15 March, 2014	NA	NA
7.	IS 14202(Part 2): 2014 Identification cards-Integrated circuit cards-Part 2 : Cards with contacts-Dimension and location of the contacts (Second Revision)	15 March, 2014	NA	NA

(1)	(2)	(3)	(4)	(5)
8.	IS 15109 (Part 2) : 2014/ ISO 11269-2 : 2012 Soil Quality- Determination of the effects of pollutants on soil flora-Part 2: Effects of Chemicals on the emergence and growth of higher plants *(First Revision)*	15 March, 2014	IS 15109 (Part 2) : 2002/ISO 11269-2 : 1995 Soil Quality- Determination of the effects of pollutants on soil flora-Part 2: Effects of Chemicals on the emergence and growth of higher plants	15 March, 2014
9.	IS 16132 : 2014/ISO 2881 : 1992 Tobacco and Tobacco products- Determination of Alkaloid Content- Spectrometric Method	15 March, 2014	NA	NA
10.	IS 16138 : 2013 ISO/TS 15768 : 2000 Measurement of Liquid Velocity in open channels-Design, Selection and use of electromagnetic current meters	15 March, 2014	NA	NA
11.	IS 16140 : 2014/ISO 1718 : 1991 Rock drilling equipment—Drill rods with tapered connection for percussive drilling	15 March, 2014	NA	NA
12.	IS 16141 : 2013 Pyriproxyfen, Technical- Specification	15 March, 2014	NA	NA
13.	IS 16145 : 2013 Fipronil suspension concentrate (SC) Specification	15 March, 2014	NA	NA
14.	IS 16147 : 2014 Carrageenan, Food grade - Specification	31 March, 2014	NA	NA
15.	IS 16150 (Part 1) : 2014 Fish Feed - Specification Part 1 Carp Feed	15 March, 2014	NA	NA
16.	IS 16150 (Part 2) : 2014 Fish Feed - Specification Part 2 Catfish Feed	15 March, 2014	NA	NA

(1)	(2)	(3)	(4)	(5)
17.	IS 16150 (Part 3) : 2014 Fish Feed - Specification Part 3 Marine Shrimp Feed	15 March, 2014	NA	NA
18.	IS 16150 (Part 4) : 2014 Fish Feed - Specification Part 4 Freshwater Prawn (Macrobrachium rosenbergii) Feed	15 March, 2014	NA	NA
19.	IS 16171 : 2014 Veneer Laminated Lumber - Specification	15 March, 2014	NA	NA
20.	IS 16186 : 2014 Textiles - Light weight jute sacking bags for packing 50 kg. foodgrains	15 March, 2014	NA	NA
21.	IS/ISO 80000-1 : 2009 Quantities and units Part 1 : General	15 March, 2014	IS 1890 (Part 0) : 1992 Quantities and units : Part 0 General Principles *(First Revision)* and IS 10005 : 1994 SI units and recommendations for the use of their multiples and of certain other units *(Second Revision)*	15 March, 2014
22.	IS/ISO 80000-2 : 2009 Quantities and units Part 2 : Mathematical signs and symbols to be used in the natural sciences and technology	15 March, 2014	IS 1890 (Part 11) : 1992 Quantities and units : Part 11 Mathematical signs and symbols to be used in the natural sciences and technology *(Second Revision)*	15 March, 2014
23.	IS/ISO 80000-3 : 2009 Quantities and units Part 3 : Space and Time	15 March, 2014	IS 1890 (Part 1) : 1992 Quantities and units : Part 1 Space and Time *(Third Revision)*	15 March, 2014

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bahvan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. PUB/GN-1]

KALA M. VARIAR, Director (Foreign Languages & Publication)

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 30 अप्रैल, 2013

का.आ. 1112.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 12) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता के नाम में परिवर्तन के कारण और संशोधन करती है, अर्थात् :—

उक्त प्रथम अनुसूची में "सवीता विश्वविद्यालय, चेन्नई" के सामने 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बन्धित प्रविष्टि के बाद 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :—

(2)	(3)
बैचलर ऑफ मैडिसन एंड	एम.बी.बी.एस
बैचलर ऑफ सर्जरी	(यह जनवरी, 2013 में या उसके बाद 150 छात्रों को प्रति वर्ष प्रवेश के साथ सवीता चिकित्सा महाविद्यालय एवं अस्पताल, कांचीपुरम, तमिल नाडु में प्रशिक्षित किये जा रहे छात्रों के संबंध में सवीता विश्वविद्यालय, चेन्नई द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी ।)

[सं. यू. 12012/497/2007-एमई (पी-II)]

अनीता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 30th April, 2013

S.O. 1112.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against ''Saveetha University, Chennai" under the heading 'Recognized medical Qualification' [in column (2)] and under the heading 'Abbreviation for Registration' [in column (3)], the following shall be inserted, namely :—

(2)	(3)
Bachelor of Medicine and	M.B.B.S.
Bachelor of Surgery	(This shall be a recognized medical qualification when granted by Saveetha University, Chennai in respect of students being trained at Saveetha Medical College & Hospital, Kancheepuram, Tamil Nadu on or after January, 2013 with annual intake of 150 students per year.

[No. U. 12012/497/2007-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 29 मई, 2013

का.आ. 1113.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा शक्तियों का प्रयोग करते हुए केंद्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता के नाम में परिवर्तन के कारण और संशोधन करती है, अर्थात् :—

उक्त प्रथम अनुसूची में "महर्षि मार्कण्डेश्वर विश्वविद्यालय, मौलाना (अंबाला) के सामने'' 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बन्धित प्रविष्टि के बाद 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :—

(2)	(3)
बैचलर ऑफ मैडिसन एंड बैचलर ऑफ सर्जरी	एम.बी.बी.एस (यह शैक्षणिक वर्ष 2007 से प्रति वर्ष 150 छात्रों को प्रवेश के साथ एम.एम. चिकित्सा विज्ञान एवं अनुसंधान, मौलाना (अंबाला) में प्रशिक्षित किये जा रहे छात्रों के संबंध में महर्षि मार्कण्डेश्वर विश्वविद्यालय, मौलाना (अंबाला) द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी ।)

[सं. यू. 12012/101/2002-एमई (पी-II)पार्ट]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 29th May, 2013

S.O. 1113.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against "Maharishi Markandeshwar University, Maullana (Ambala)" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading 'Abbreviation for Registration' [in column (3)], the following shall be inserted, namely :—

(2)	(3)
Bachelor of Medicine and Bachelor of Surgery	M.B.B.S. (This shall be a recognized medical qualification when granted by Maharishi Markandeshwar University, Maullana (Ambala) in respect of students being trained at M.M. Institute of Medical Sciences & Research, Muallana (Ambala) in respect of 150 students per year admitted from the academic year 2007 onwards.

[No. U. 12012/101/2002-ME(P-II)Pt.]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 4 जून, 2013

का.आ. 1114.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा शक्तियों का प्रयोग करते हुए केंद्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

'मान्यता प्राप्त चिकित्सा अर्हता' शीर्षक [इसके बाद कालम (2) में यथा सन्दर्भित] के अंतर्गत और 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) में यथा संदर्भित] शीर्षक के तहत उक्त अनुसूची में "राजस्थान आयुर्विज्ञान विश्वविद्यालय, जयपुर" के समक्ष निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :—

(2)	(3)
बैचलर ऑफ मेडिसन एंड बैचलर ऑफ सर्जरी	एम.बी.बी.एस (यह प्रतिवर्ष 100 में एम.बी.बी.एस छात्रों के वार्षिक प्रवेश सहित फरवरी, 2013 में या उसके बाद झलावर, मेडिकल कॉलेज, झलावर, जयपुर में प्रशिक्षित किये जा रहे छात्रों के संबंध में 'राजस्थान आयुर्विज्ञान विश्वविद्यालय, जयपुर द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।

[सं. यू. 12012/523/2007-एमई(पी-II)]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 4th June, 2013

S.O. 1114.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against "Rajasthan University of Health Sciences, Jaipur" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading 'Abbreviation for Registration" [in column (3)], the following shall be inserted, namely :—

(2)	(3)
Bachelor of Medicine and Bachelor of Surgery	M.B.B.S. (This shall be a recognized medical qualification when granted by Rajasthan University of Health Sciences, Jaipur in respect of students being trained at Jhalawar Medical College, Jhalawar, Rajasthan on or after February, 2013 with annual intake of 100 students per year.

[No. U. 12012/523/2007-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 16 सितम्बर, 2013

का.आ. 1115.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा शक्तियों का प्रयोग करते हुए केंद्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता के नाम में परिवर्तन के कारण और संशोधन करती है, अर्थात् :—

(क) उक्त प्रथम अनुसूची में "चौधरी चरण सिंह विश्वविद्यालय, मेरठ" के सामने 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बन्धित प्रविष्टि के बाद 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :—

(2)	(3)
बैचलर ऑफ मेडिसन एंड बैचलोर ऑफ सर्जरी	एम.बी.बी.एस (यह मार्च 2013 में या उसके बाद प्रति वर्ष 100 एमबीबीएस छात्रों के वार्षिक प्रवेश के साथ सरस्वती चिकित्सा विज्ञान संस्थान, हापुर, गाजियाबाद में प्रशिक्षित किये जा रहे छात्रों के संबंध में चौधारी चरण सिंह विश्वविद्यालय, मेरठ द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।

[सं. यू. 12012/506/2006-एमई(पी-II)]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 16th September, 2013

S.O. 1115.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against "Ch. Charan Singh University, Meerut, (Uttar Pradesh)" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading 'Abbreviation for Registration' [in column (3)], the following shall be inserted, namely :—

(1)	(2)
Bachelor of Medicine and Bachelor of Surgery	M.B.B.S. (This shall be a recognized medical qualification when granted by Ch. Charan Singh University, Meerut, (Uttar Pradesh) in respect of students being trained at Saraswathi Institute of Medical Sciences, Hapur, Ghaziabad, Uttar Pradesh on or after March, 2013 with annual intake of 100 MBBS students per year on or after March, 2013.

[No. U. 12012/506/2006-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 29 अक्तूबर, 2013

का.आ. 1116.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 क उपधारा (2) द्वारा शक्तियों का प्रयोग करते हुए केंद्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता के नाम में परिवर्तन के कारण और संशोधन करती है, अर्थात् :-

(क) उक्त प्रथम अनुसूची में ''बेंगुलुरु विश्वविद्यालय, बेंगुलुरु'' के सामने 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बन्धित प्रविष्टि के बाद 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :-

डॉक्टर ऑफ मेडिसिन (फार्मेकोलॉजी)	एम.डी. (फार्मेकोलॉजी) (यह 1996-2000 तक बाद बी.आर. अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में बेंगुलुरु विश्वविद्यालय, बेंगुलुरु द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।
डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (मेडिसिन) (यह 1996-2001 तक बाद बी.आर. अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में बेंगुलुरु विश्वविद्यालय, बेंगुलुरु द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।
मास्टर ऑफ सर्जरी (अस्थिरोग विज्ञान)	एम.एस. (अस्थिरोग विज्ञान)) (यह 1995-2001 तक बाद बी.आर. अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में बेंगुलुरु विश्वविद्यालय, बेंगुलुरु द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।

(ख) उक्त प्रथम अनुसूची में ''राजीव गाँधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगुलुरु कर्नाटक'' के सामने 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बन्धित प्रविष्टि के बाद 'पंजीकरण के लिये संक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :-

डॉक्टर ऑफ मेडिसिन (फार्मेकोलॉजी)	एम.डी. (फार्मेकोलॉजी) (यह 2000 में या उसके बाद बी.आर. अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में राजीव गाँधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगुलुरु, कर्नाटक द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।
डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (जनरल मेडिसिन) (यह 2001 में या उसके बाद बी.आर.अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में राजीव गाँधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगुलुरु, कर्नाटक द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।
मास्टर ऑफ सर्जरी (अस्थिरोग विज्ञान)	एम.एस. (अस्थिरोग विज्ञान) (यह 2001 में या उसके बाद बी.आर.अम्बेडकर मेडिकल कॉलेज, बेंगुलुरु में प्रशिक्षित किये जा रहे छात्रों के संबंध में राजीव गाँधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगुलुरु, कर्नाटक द्वारा स्वीकृत किये जाने पर मान्यता प्राप्त चिकित्सा अर्हता होगी) ।

सभी के लिये नोट : 1. किसी स्नातकोत्तर पाठ्यक्रम को इस प्रकार प्रदत्त मान्यता अधिकतम 05 वर्ष की अवधि के लिए होगी और उसके बाद उसका नवीकरण करना होगा ।

2. उप-खण्ड-4 में यथापेक्षित समय पर मान्यता का नवीकरण न होने पर संबंधित स्नातकोत्तर पाठ्यक्रम में दाखिला रुक जाएगा ।

[सं. यू.-12012/37/2011-एमई (पी-II)]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 29th October, 2013

S.O. 1116.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely :—

In the said Schedule—

(a) against "Bangalore University, Bangalore" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3), the following shall be inserted, namely :—

"Doctor of Medicine (Pharmacology)"	MD (Pharmacology) (This shall be a recognised medical qualification when granted by Bangalore University, Bangalore in respect of students being trained at Dr. B.R. Ambedkar Medical College, Bangalore between 1996 to 2000.
"Doctor of Medicine (General Medicine)"	MD (General Medicine) (This shall be a recognised medical qualification when granted by Bangalore University, Bangalore in respect of students being trained at Dr. B.R. Ambedkar Medical College, Bangalore between 1996 to 2001.
"Master of Surgery (Orthopaedics)"	MD (Orthopaedics) (This shall be a recognised medical qualification when granted by Bangalore University, Bangalore in respect of students being trained at Dr. B.R. Ambedkar Medical College, Bangalore between 1995 to 2001.

(b) against "Rajiv Gandhi University of Health Sciences, Bangalore" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3), the following shall be inserted, namely :—

"Doctor of Medicine (Pharmacology)"	MD (Pharmacology) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Dr. B.R. Ambedkar Medical College, Bangalore on or after 2000.
"Doctor of Medicine (General Medicine)"	MD (General Medicine) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Dr. B. R. Ambedkar Medical College, Bangalore between on or after 2001.

"Master of Surgery (Orthopaedics)"	MS (Orthopaedics) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Dr. B.R. Ambedkar Medical College, Bangalore between on or after 2001.

Note to all : 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-4 sall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U.-12012/37/2011-ME (P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 27 मार्च, 2014

का.आ. 1117.—जबकि भारतीय चिकित्सा परिषद्; संशोधन अध्यादेश, 2013 की धारा 3क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 06 नवंबर, 2013 को भारतीय चिकित्सा परिषद् का पुनर्गठन किया गया :

और जबकि केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ख) के अनुसरण में और संबंधित विश्वविद्यालयों/स्वास्थ्य विज्ञान विश्वविद्यालयों द्वारा यथा सूचित, निम्नलिखित व्यक्ति को इस अधिसूचना के जारी होने की तिथि से चार वर्षों के लिए भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में निर्वाचित किया गया है ।

अत: अब उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित संशोधन किए जाते हैं; अर्थात् :-

भारत सरकार, स्वास्थ्य एवं परिवार कल्याण मंत्रालय की दिनांक 06 नवंबर, 2013 की अधिसूचना संख्या का.आ. 3325 (अ) और उसके संशोधन में अंतिम प्रविष्टि तथा तत्संबंधी प्रविष्टि में निम्नलिखित को जोड़ा जाएगा, अर्थात् :

क्रम सं.	विश्वविद्यालय का नाम	निर्वाचित सदस्य का विवरण	चुनाव का तरीका
36.	तीर्थंकर महावीर विश्वविद्यालय, मोरादाबाद (उत्तर प्रदेश)	डॉ. वी.पी. मिश्र, प्रोफेसर एमेरिटस, फैकल्टी ऑफ मेडिसिन, तीर्थंकर महावीर विश्वविद्यालय, मुरादाबाद (उत्तर प्रदेश)	सिनेट द्वारा निर्विरोध निर्वाचित

[सं. वी.-11013/7/2013-एम ई पी-1]

अमित बिश्वास, अवर सचिव

पाद टिप्पणी : दिनांक 9 जनवरी, 1960 के सा.का. 138 के तहत भारत के राजपत्र में मुख्य अधिसूचना प्रकाशित की गई थी और भारतीय आयुर्विज्ञान परिषद् (संशोधन), द्वितीय अध्यादेश, 2013 (2013 का 11) के तहत अंतिम बार संशोधित किया गया था ।

New Delhi, the 27th March, 2014

S.O. 1117.—Whereas on 06th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of Section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And Whereas the Central Government, in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council, Act, 1956 (102 of 1956) and as informaed by the respective universities/health science universities, the following have been elected to be a member of the Medical Council of India for four years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S. O. 138 dated the 9th January, 1960, namely :

In the notification of the Government of India in the Ministry of Health & Family Welfare number S. O. 3325 (E) dated the 06th November, 2013 and amendments thereto, after the last entry and entry relating thereto, the following shall be inserted, namely :—

S. No.	Name of the University	Details of the Elected Member	Mode of Election
36.	Teerthanker Mahaveer University, Moradabad (UP)	Dr. V. P. Mishra, Professor Emeritus, Faculty of Medicine, Teerthanker Mahaveer University, Moradabad Uttar Pradesh	Elected unanimously by Senate

[No. V. -11013/7/2013-MEP-I]

AMIT BISWAS, Under Secy.

Foot Note : The principal notification was publish in the Gazette of India vide number S. O. 138 dated the 9th January, 1960 and was last amended vide Indian Medical Council (Amendment) Second Ordinance, 2013 (11 of 2013).

कोयला मंत्रालय

आदेश

नई दिल्ली, 27 मार्च, 2014

का.आ. 1118.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 746 तारीख 25 मार्च, 2013, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 30 मार्च, 2013 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित उक्त भूमि माप वाली के 161.549 हेक्टेयर (लगभग) या 399.18 एकड़ (लगभग) भूमि में या उस पर के भू-सतह अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यांतिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार को यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला-बिलासपुर-495006 (छत्तीसगढ़) (जिसे इसमें इसके पश्चात् उक्त सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिये रजामंद है ।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त 161.549 हेक्टर (लगभग) या 399.18 एकड़ (लगभग) भूमि और उस पर के भू-सतह अधिकार, तारीख 30 मार्च, 2013 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कम्पनी में निहित हो जाएंगे, अर्थात् :-

(1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसान और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) सरकारी कम्पनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिये एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और ऐसे अधिकरण की सहायता करने के लिये नियुक्त व्यक्तियों के संबंधों में उपगत सभी व्यय, उक्त कम्पनी द्वारा वहन किये जायेंगे और इसी प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिये या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इसी प्रकार उक्त सरकारी कम्पनी द्वारा वहन किये जाएंगे;

(3) सरकारी कम्पनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कम्पनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमियों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कम्पनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिये दिए जाएं या अधिरोपित की जाए, पालन करेगी ।

[फा. सं.- 43015/04/2010-पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 27th March, 2014

S.O. 1118.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 746 dated 25th March, 2013 published in the Gazette of India, Part-II, Section 3, sub-section (ii) dated the 30th March, 2013 issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land measuring 161.549 hectares (approximately) or 399.18 acres (approximately) as Surface Rights in or over the said land described in the schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act.

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, Post Box No. 60, District-Bilaspur-495006 (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the power conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby direct that the Surface Rights of 161.549 hectares (approximately) or 399.18 acres (approximately) in or over the said lands so vested shall with effect from 30th March, 2013 instead of continuing to so vest in the Central Government shall vest in the Government company subject to the following terms and conditions namely :—

(1) The Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like as determined under the provisions of the said Act;

(2) A Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the Government company under conditions (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government compny and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc. for or in connection with the rights in or over the said lands so vesting shall also be borne by the Government company;

(3) The Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vesting;

(4) The Government company shall have no power to transfer the said lands to any other persons without the prior approal of the Central Government; and

(5) The Government company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No.- 43015/04/2010-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, दिनांक 18 मार्च, 2014

का.आ. 1119.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गेल (इंडिया) लिमिटेड, नई दिल्ली के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं, अर्थात् :-

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई समाजिक सुरक्षा अधिकारी या निगम का इस निमित प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त अधिकारी या अन्य पदधारी इस अधिनियम के प्रयोजनार्थ आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

(6) विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/28/2013-एसएस-I]

अजय मलिक, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th March, 2014

S.O. 1119.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/ establishments of Gail (India) Limted, New Delhi from the operation of the said Act. The exemption shall be effective from the date of issue of this Notification for a period of one year.

2. The above exemption is subject to the following conditions namely:-

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';

(2) Not withstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of Section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/28/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 18 मार्च, 2014

का.आ. 1120.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स पवन हंस हेलिकॉप्टर लिमिटेड के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं, अर्थात् :-

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टयों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई समाजिक सुरक्षा अधिकारी या निगम का इस निमित प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त अधिकारी या अन्य पदधारी इस अधिनियम के प्रयोजनार्थ आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य

परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/13/2013-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 18th March, 2014

S.O. 1120.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of M/s. Pawan Hans Helicopters Ltd., from the operation of the said Act. The exemption shall be effective from the date of issue of this Notification for a period of one year.

2. The above exemption is subject to the following conditions namely:—

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;

(2) Not withstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/13/2011-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 18 मार्च, 2014

का.आ. 1121.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर गन कैरिज फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/131/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2014 को प्राप्त हुआ था।

[सं. एल-14011/08/93-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 18th March, 2014

S.O. 1121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/131/96) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Gun Carriage Factory, Jabalpur and their workmen, which was received by the Central Government on 15/03/2014.

[No. L-14011/08/93-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/131/96

Presiding Officer : SHRI R. B. PATLE

General Secretary,
GCF Labour Union,
Q. No. 3499,
Near Electric Pole No. 52,
Adhartal, Jabalpur .....Workman

Versus

General Manager,
Gun Carriage Factory,
Jabalpur. .....Management

AWARD

(Passed on this 3rd day of February, 2014)

1. As per letter dated 30-5-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14011/08/93-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Gun Carriage Factory, Jabalpur (MP) in refusing to give the benefit of promotion from Grade "C" to Grade "C" to Shri R.M.Upadhyay, T.No. 2646/183, Shri C.H.Pillie, T.No. 2645/16174, Shri S.K.Saxena T.No. 48170/1590, Shri M.C.Dass, T.No. 26391/1534 and Shri S.K.Dubey T.No. 5260/IE is proper, legal and justified? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party filed Statement of claim at Page 6/1 to 6/7. Case of workman is that he received training as apprentice in Ordnance Factory, Jabalpur from 1963. He completed 3 years training on 30-6-86 as per the syllabus. He was recruited as Trade Apprentice on 15-7-1963. As per Para-4(b) of the prospects, the test for non-designated trades are conducted by DGOF. Only those apprentice who have completed training and had successfully cleared N.C.T.V.T test are granted proficiency test. That Para-7 of the syllabus can be subjected to trade test by factories concerned. Since carpenter trade designated trade in para-7 of the prospectus, it was not within the powers of the management to subject the workman to another trade. Despite Ist party workman completed 3 years training, the workman was not appointed as skilled workman. Other batchmates of workman including Shri S.D.Trivedi, S.K.Dubey, P.S.Rajpur and A.K.Seth were absorbed as skilled craftsman Grade II i.e. Grade B in the scale Rs. 110-3-131-4-143. His batchmates were absorbed as skilled craftsman Grade II vide order dated 18-7-66 that none passed the N.C.T.V.T test in March 1967.

3. Workman further submits that he was appointed as Carpenter Grade-III "C" in the scale 85-2-95-3-110. Despite of workman passing test on 6-2-67, vacancies were available, he was not appointed as skilled Draftsman Grade "B" , workman was appointed in lower grade in semi-skilled category whereas other batchmates had been absorbed in the skilled craftsman Grade-II/Grade "B" in skilled category. Workman was designated in February 1967, persons junior to him such as S.D.Trivedi, Chedilal, Basorelal Jogi who completed 3 years training on 10-2-67 were appointed as carpenter Grade "B" Scale110-143 in skilled category. Workman further submits that S.D.Trivedi who was junior to him was initially appointed in the higher grade of 110-143. He was promoted as chargeman Grade I in 1990. Shri S.K.Dubey, P.S.Rajpur, S.K.Seth were working as watchman Grade-I. workman was languishing in Highly Skilled Grade B. workman submits that he has discriminated his juniors are shown favour. That initial appointment in wrong grade gives recurring cause of action. Bar of limitation is not attracted. On such ground, workman is praying pay scale of Rs.110-143 from July 1966.

4. IInd party management filed Written Statement at Page 8/1 to 8/3. IInd party denied claim of applicant as the dispute is raised after lapse of more than 30 years. IInd party did not dispute that the workman was recruited as

Trade Apprentice from 15-7-63 to 30-6-66. His conduct was not conducive to discipline during training period. The workman was warned and censured for his habitual late attendance, breach of establishment orders, neglect of duty and taking meals before the scheduled time. His stipend was reduced, increments were withheld for charges of late attendance. That as per clause 22(1) of the Apprentices Act, 1961, it was not obligatory on part of employer to offer any employment to any apprentice who has completed the period of training in the establishment. Workman was trained in the establishment, he was absorbed from 21-9-66 as carpenter Grade "C" – pay scale 85-2-95-3-110. The dispute is raised after 30 years. All other contentions of workman are denied. Workman was at liberty not to accept trade and grade he was offered based on his performance. As workman accepted the grade in 1966, he cannot challenge it after 35 years. That workman himself stated that he was not passed NCTVT test . There was no question of non-fulfillment of promise. The individuals whom the applicant is mentioning to have reached the higher grades were at no point of time junior to him. IInd party submits that they were initially pointed in higher grades as skilled workman on completion of training period and passing requisite test. IInd party prays for rejection of claim.

5. Rejoinder is filed by workman at Page 11/1 to 11/5 reiterating his contentions in Statement of Claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Gun Carriage Factory, Jabalpur (MP) in refusing to give the benefit of promotion from Grade "C" to Grade "C" to Shri R.M. Upadhyay, T.No. 2646/183, Shri C.H.Pillie, T.No. 2645/16174, Shri S.K.Saxena T.No. 48170/1590, Shri M.C.Dass, T.No. 26391/1534 and Shri S.K.Dubey T.No. 5260/IE is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The terms of reference relates to refusal without giving benefit of promotion from Grade B to Grade C to Shri R.M.Upadhyay- Ist party workman appears incorrect. Grade B post is higher post and therefore there cannot be promotion from Grade B to C. The perusal of record shows that application were filed for amendment in terms of reference. Application was rejected for the reason that the amendment in terms of reference is within the power of Central Government. The Tribunal cannot allow amendment. Thus the terms of reference appears incorrect.

8. Workman has filed affidavit of his evidence but failed to appear for his cross-examination. Shri Chumdemo Ngullie, Management's witness was not cross-examined. Advocate Mahesh Namdeo declined to cross-examine the management's witness claiming that he had no instructions. The witness is discharged. The evidence of management's witness remained unchallenged. I do not find reason to disbelieve his evidence. Evidence of workman cannot be considered for his failure to appear for cross-examination. Evidence of management's witness remained unchallenged. The dispute is referred after lapse of more than 30 years. The claim of the workman claiming promotion to skilled category of Carpenter Grade "B" cannot be entertained after such lapse of time. Therefore I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

(1) Action of the management of Gun Carriage Factory, Jabalpur (MP) in refusing to give the benefit of promotion from Grade "C" to Grade "C" to Shri R.M.Upadhyay, T.No. 2646/183, Shri C.H.Pillie, T.No. 2645/16174, Shri S. K.Saxena T. No. 48170/1590, Shri M.C.Dass, T.No. 26391/1534 and Shri S.K.Dubey T.No. 5260/IE is legal and proper.

(2) Workman is not entitled to relief prayed by him.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1122.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/178/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-40012/110/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/178/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General

Manager, Deptt. of Telecommunication, Bhopal and their workman, which was received by the Central Government on 15/03/2014.

[No. L-40012/110/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/178/99

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Dhaniram
S/o Shri Dayaram,
C/o Moh. Vasi Khan,
H.No. 165, Mufti Bagh,
Shahjahanabad, Bhopal ...Workman

Versus

Chief General Manager,

Deptt. of Telecommunication,
Hoshangabad Road,
MP Circle,
Bhopal ...Management

AWARD

(Passed on this 28th day of February, 2014)

1. As per letter dated 23-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/110/981IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Dhaniram S/o Shri Dayaram is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at Page 4/1 to 4/2. The case of 1st party workman is that he was in employment of IInd party from 1980 to 1990 for 1797 days. His services are terminated from March 1990 in violation of Section 25-F of I.D.Act. He was not paid retrenchment compensation. That he had completed 240 days continuous service preceding his termination. That scheme was circulated for grant of temporary status to the casual workers. Still his services were terminated. That as per scheme circulated on 30-3-95, he is entitled for temporary status. He submits that termination of his service is illegal. He prays for regularization in service.

3. IInd party filed Written Statement at Page 7/1 to 7/2. IInd party submits that workman was engaged purely as casual labour. His services were restricted to the working days. The services of casual labour are covered by policy framed by the department as per requirement. IInd party denies that services of workman are terminated from March 1990. That workman himself remained absent from work. Workman was not retrenched. There is no question of payment of retrenchment compensation. Workman had not completed 240 days continuous service. He is not entitled to regularization as per the scheme. As the cut out date is 22-6-88, workman should have continuously worked for minimum 240 days. IInd party prays for rejection of the claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :—

"(i) Whether the action of the management of Chief general Manager, Telecom in terminating the services of Shri Dhaniram S/o Shri Dayaram is legal and justified?	In Affirmative
(ii) If not what relief the working is entitled to ?"	workman is not entitled to relief

REASONS

5. Though workman has filed statement of claim, he failed to participate in reference proceeding. His evidence is closed on 11-6- 2011. The management filed affidavit of witness Shri A.K.Balpande, Divisional Engineer. Management's witness says that workman was never engaged as casual labour. He has not completed 240 days working in a year. That workman was not fulfilling eligibility for regular appointment. The evidence of management's witness remained unchallenged. I find no reason to disbelieve his evidence. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) Action of the management of Chief General Manager, Telecom in terminating the services of Shri Dhaniram S/o Shri Dayaram is proper and legal.

(2) Workman is not entitled to relief prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1123.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर व्हीकल फैक्ट्री, जबलपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/319/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42012/199/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/319/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Vehicle Factory, Jabalpur and their workman, which was received by the Central Government on 20/03/2014.

[No. L-42012/199/96-IR(DU)

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/319/97

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Vehicle Factory Mazdoor Union,
Q. No. 2200, VFJ Estate,
Jabalpur. ...Workman/Union

Versus

General Manager,
Vehicle Factory,
Jabalpur (MP) ...Management

AWARD

Passed on this 17th day of February 2014

1. As per letter dated 12-12-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-42012/199/96-IR(DU) dated 12-12-97. The dispute under reference relates to:

> " Whether the action of the management of Vehicle Factory, Jabalpur (MP) in not giving three annual increment to Mr. Pitamber Prasad Patel, Fitter General Skilled is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. General Secretary of Mazdoor Union filed Statement of claim on behalf of workman Pitamber Prasad Patel. The case of Ist party Union is that General Manager of IInd party decided to hold enquiry against workman as per order dated 20-3-92 under Rule 16(1)(2) CA & CCS Rules 1965. That Enquiry Officer Shri S.K. Ghosh was appointed. Shri B.B. Som, Asstt. Foreman was appointed as Management's Representative. That enquiry was conducted in violation of rules and procedure for enquiry. Punishment of with-holding 3 increments was imposed against workman. Appeal preferred by workman was dismissed without considering the reasons. That Enquiry Officer had allowed Presenting Officer to ask leading questions. The previous statements of prosecution witnesses were not applied. The witnesses were tutored. That co-accused Shri G.C. Das was not found guilty of the charges. The findings of Enquiry Officer holding workman guilty is perverse. On such ground, Union prays to quash the penalty imposed against workman.

3. Written Statement is filed by IInd party at page 5/1 to 5/14. IInd party submits that on complaint from Vandana Ashtaputri General Mazdoor initiated domestic enquiry against workman, chargesheet was issued to him about using derogatory language by workman to Smt.Vandana. enquiry was conducted as per rules by Enquiry Officer Shri S.K.Ghosh. B.B.Som Asstt. Foreman was the Presenting Officer. The details of Enquiry Proceedings are given in Para-7. It is submitted that enquiry is conducted properly allowing full opportunity of defence to the workman. Enquiry is fair and legal. On report of Enquiry Officer, charges are proved against workman. The punishment of with-holding 3 increments is imposed. The punishment is proper. The allegation of enquiry conducted against workman is vitiated is denied. IInd party prays for rejection of claim.

4. As per order dated 20-2-2013, enquiry conducted is found proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Vehicle Factory, Jabalpur (MP) in not giving three annual increment to Mr. Pitamber Prasad Patel, Fitter General Skilled is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by them

REASONS

6. As stated above, enquiry conducted against workman is proper and legal as per order dated 26-2-2013. The question remains to be considered whether the charges against workman are proved from evidence in Enquiry Proceedings, whether the punishment withholding 3 increments of workman is proper and legal. The evidence in Enquiry Proceedings shows that statements of Vandana and two other witnesses were recorded before Enquiry Officer. Vandana was cross-examined. The said witness said that she had given correct information from record. She denies that the amount was

Rs. 1961 when the individuals approached her. She was doing her work. When Shri P.P.Patel uttered derogative language prior to that he utter such language in her front. In reply to Q.No.20, she says because they had come to her and discussed with her only she believed that the language was addressed to her. The witness No.2 Anima Chari also corroborated evidence of Vandana. She has stated that P.P.Patel and one more gentleman came to Vandana regarding some bill had discussion. While going away Shri Patel had passed remark- "अष्टपुत्रे से कहा कैसी कैसी सूखी मरी हत्याओं को यहां बैठा रखा हैं". The evidence is not shattered in cross-examination. Management's witness Shri V.P.Kori also supported allegations against workman using derogative language against Vandana. His evidence is not shattered in cross-examination. The findings of enquiry are supported by cogent evidence. Therefore I record my finding in Point No.1 in Affirmative.

7. The only punishment of withholding three increments is imposed by Competent Authority considering nature of incident alleged supported by cogent evidence, the punishment cannot be said exorbitant. No interference is called for. Therefore I record my finding in Point No.2 in Affirmative.

8. In the result, award is passed as under:-

(1) Action of the management of Vehicle Factory, Jabalpur (MP) withholding three annual increment to Mr. Pitamber Prasad Patel, Fitter General Skilled is proper.

(2) Workman is not entitled to relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजनल इंजीनियर टेलिकॉम प्रोजेक्ट, रायपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/212/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-40012/17/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. CGIT/LC/R/212/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Divisional Engineer, Telecom Project, Raipur, and their workman, which was received by the Central Government on 20/03/2014.

[No. L-40012/17/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/212/98

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Agnu, S/o Shri Jethu,
Vill. Ghtkachhar, PO Singhora,
Tehsil Saraipali, Distt. Raipur ...Workman

Versus

Divisional Engineer,
Telecom Project,
7, Sahakari Marg-II,
Choubey Colony,
Raipur (MP) ...Management

AWARD

(Passed on this 4th day of October, 2013)

1. As per letter dated 10-9-1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/17/98/IR (DU). The dispute under reference relates to :

> "Whether the action of the management of Divisional Engineer, Telecom Project, Raipur (MP) in terminating the services of Shri Agnu, son of Shri Jethu, Ex-Mazdoor is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices are issued to the parties, Ist party filed statement of claim at Page 3/1 to 3/4. Case of workman is that he was appointed as permanent employee in 1986. His services were discontinued from 16-2-.88. He was continuously working for more than 240 days prior to 12 calendar months of his termination. That termination of his services amounts to retrenchment. He was not given one months notice or termination of his services, notice pay was not paid to him, retrenchment compensation was not paid to him. Termination of his service is in violation of Section 25-F (a), (b) of I.D.Act. That action of IInd party is arbitrary. Termination of his service is by way of victimization violating principles of natural justice. Ist party further submits that employees junior to him filed petition No. 1960/90 before CAT, claiming regularization. That said petition was allowed. The order of termination of services was set-aside Directions were

issued to IInd party to accommodate the petitioners against available vacancies. Workman prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/2 opposing claim of workman. IInd party denies that workman Was appointed by management. That there was no vacant post with the management. That workman was not engaged by Telecom Divisional Engineer Project rather he was engaged by DE Coaxial Cable Project, Raipur. That workman was engaged on muster roll on daily wage basis. The retention period of muster roll is 5 years. IInd party submits that it is difficult for it to make comments why reference is filed very late, other contentions of workman are denied. It is denied that workman was not appointed as per directions of Hon'ble CAT, Jabalpur with Original Application 71/91, 196/90. IInd party prays for rejection of claim of workman.

4. Workman filed rejoinder at. Page 7/1 to 7/2 reiterating its contentions in statement of claim. Workman had denied adverse contentions in Written Statement filed by IInd party.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :—

(i)	Whether the action of the management of Divisional Engineer, Telecom Project, Raipur (MP) in terminating the services of Shri Agnu, Son of Shri Jethu, Ex-Mazdoor is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed is rejected.

REASONS

6. Though workman is challenging legality of termination of his services and filed statement of claim, affidavit of evidence is filed by workman, he failed to appear for cross-examination. Consequently it was ordered that affidavit of workman shall not be read in evidence as per ordersheet dated 5-12-06 and proceeded exparte against him.

7. Management filed affidavit of its witness Shri R.R.Yadav, The evidence of management's witness remained unchallenged. Thus the witnesses for both parties are not cross-examined by the adversant parties. As evidence on affidavit of workman is observed shall not be considered as such there is no evidence to substantiate claim of workman. Therefore action of IInd party terminating services of workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under :

(1) Action of the management of Divisional Engineer, Telecom Project, Raipur (MP) in terminating the services of Shri Agnu, Son of Shri Jethu, Ex-Mazdoor is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेजर-कम-असिस्टेंट आनरेरी सेक्रेटरी टोरस ऑफिसर इंस्टिट्यूट के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 दिल्ली के पंचाट (संदर्भ संख्या 331/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42011/76/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 331/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Major-cum-Asstt. Hony. Secretary, Taurus Officer Institute, New Delhi and their workmen, which was received by the Central Government on 20/03/2014.

[No. L-42011/76/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 331/2011

The General Secretary,
Rajya Mazdoor Sabha (Regd.),
2094/5D, Prem Nagar,
West Patel Nagar,
Delhi. .....Workman

Versus

Major-cum-Asstt. Hony. Secretary,
Taurus Officer Institute,
2, the Mall, Delhi Cantt.,
New Delhi. .....Management

AWARD

To provide recreational facilities to its officers and their family members, club by the name of Tauras Officers Institute (hereinafter referred to as the Institute) is being run at Delhi Cantt., Delhi, by the Indian Army. The Institute has engaged various persons to work as accounts clerk, barmen, waiter, cook, mali, tea/maker and sweepers etc. The employees, so engaged by the Institute, are to be paid minimum wages, notified by the appropriate Government from time to time. The employees raised a demand for grant of minimum wages, annual increment@ 25% per annum, bonus, overtime allowance and house rent allowance, which demand was not conceded to by the Institute. Aggrieved by that act employees, working on above posts, approached the Rajya Mazdoor Sabha (in short the union) for redressal of their grievance. The union raised the dispute before the conciliation Officer. The Institute contested the claim put forth by the union and as such, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-42011/76/2011-IR(DU) New Delhi dated 14.10.2011 with following terms:

"Whether action of management of Taurus Officers Institute, Delhi-10, in denying benefits/legal dues/ demand as detailed in Annexure C to Shri Erick Massey and 13 others (list enclosed) is legal and justified? To what benefit/relief the workmen concerned are entitled to and from which date?"

2. In the list, enclosed with the reference order, names of employees concerned with the dispute have been detailed as Erick Massey, Rajan Yadav, Patric Massey, Uday Kumar, Sanjay Kumar, Ramesh Kumar, Deep Chand, Shyam Lal, Prem Kumar, Shankar Lal, Bachchu Ram, Vikram, Raju and Pravin Kumar.

3. In Annexure C, annexed with the reference order, demands raised by the union are detailed as a right to receive minimum wages, 10% yearly increment in the minimum wages for the years 2006-07, 2007-08 and 2008-09, attendance card, appointment letter and identity card, entitlement for casual leave, earned leave, festival leaves, provident fund facilities, bonus for the year 2006-07, 2007-08 and 2008-09 at 20% per annum, payment of wages on 7th day of the English calendar month, double rates of wages for overtime, two pairs of summer and winter uniform, two pairs of gloves, polish and house rent allowance @25% of the earned wages, besides washing allowance @ Rs.150.00 per month.

4. Claim statement was filed on behalf of the claimants pleading that they were engaged by the Institute on respective posts from dates detailed as below:

S. No.	Name	Father's Name	Post	Date of Joining	Salary
1.	Erick Massey	B.L.Massey	Account Clerk	1980	7000.00
2.	Rajan Yadav	R.P. Yadav	Account Clerk	1981	7000.00
3.	Patric Massey	B.L. Massey	Barman	1997	5210.00
4.	Uday Kumar	Roop Ram	Waiter	1990	5490.00
5.	Sanjay Kumar	Duli Chand	Waiter	1990	5490.00
6.	Ramesh Kumar	Nand Ram	Waiter	2000	5070.00
7.	Deep Chand	Puran Chand	Cook	1990	5490.00
8.	Shyam Lal	Rati Pal	Mali	1980	5770.00
9.	Prem Kumar	Sardar	Mali	1981	5770.00
10.	Shankar Lal	Radhey Shyam	Mali	2000	5070.00
11.	Bachu Ram	Jumman Ram	Sweeper	1974	6050.00
12.	Vikram	Bhudayal Singh	Sweeper	1990	5490.00
13.	Raju	Banawari Lal	Sweeper	2000	5070.00
14.	Pravin Kumar	Baby Ram	T. Maker	1997	5210.00

5. Claimants plead that the Institute had not issued appointment letters to them. Legal facilities such as minimum wages, 10% yearly increment in minimum wages attendance card, appointment letter, identity card, casual leave, earned leave, festival leaves, provident fund facilities, bonus for the year 2006-07, 2007-08 and 2008-09 at 20% per annum, payment of earned wages on 7th day of the English calendar month, overtime allowance at double rate than the ordinary rates of wages, two pairs of summer and winter uniform, two pairs of gloves, shoe polish and house rent allowance @25% of the earned wages and washing allowance at the rate of Rs.150.00 per month are not provided to them. Claimants used to demand above facilities from the Institute orally many a times. When

above facilities were not provided to them, they approached the union. A general body meeting of the union was held on 03.08.2009, 18.08.2009 and 15.11.2009 and notice of demand was sent to the Institute on 24.08.2009. When their demands were not conceded to, the union raised a dispute before the Conciliation Officer, but to no avail. Claimants project that they had not given any chance of complaint to the Institute. They claim that an award may be passed in their favour, directing the Institute to pay minimum wages, yearly increment @ 10% in the minimum wages, grant attendance card, appointment letter, identity card, casual leave, earned leave, festival leaves, provident fund facilities, bonus for the year 2006-07, 2007-08 and 2008-09 at 25% per month, earned wages on 7th day of the English calendar month, overtime allowance at double the rate of ordinary wages, two pairs of summer and winter uniform, two pairs of gloves, shoe polish, house rent allowance @25% of the earned wage and washing allowance @ Rs.150.00 per month.

6. The Institute resisted the claim pleading that salaries, applicable to the claimants, are more than what they claim in the claim statement. All legal facilities are being granted to them. They are paid more than the staff of defence unit run canteens. Total emoluments are being paid to them, keeping in view minimum wages notified by the appropriate Government from time to time. Emoluments paid to them are as follows:

S. No.	Name	Trade/Group	Basic Pay	HRA 30%	Interim All. 20%	Convey-ance Allow-ance	Wash-ing Allow-ance	ESI contri-bution by Institute (4.75%)	EPF contri-bution by Institute (13.61%)	Total Pay
1.	Erick Massey	Clerk C	5000	1500	1000	400	300	237.50	680.50	9118.00
2.	Rajan Yadav	Clerk C	5000	1500	1000	400	300	237.50	680.50	9118.00
3.	Deep Chand	Waiter D	3850	1155	770	400	400	183.00	524.00	7282.00
4.	Patric Massey	Barman D	3650	1095	730	400	400	174.00	497.00	6946.00
5.	Ramesh Kumar	Waiter D	3550	1065	710	400	400	169.00	483.00	6777.00
6.	Bacchu Ram	Safaiwala D	4250	1275	850	400	400	202.00	579.00	7958.00
7.	Vikram	Safaiwala D	3850	1155	770	400	400	183.00	524.00	7282.00
8.	Raju	Safaiwala D	3550	1065	710	400	400	169.00	483.00	6777.00
9.	Shyam Lal	Mali D	4050	1215	810	400	400	193.00	551.00	7619.00
10.	Prem Kumar	Mali D	4050	1215	810	400	400	193.00	551.00	7619.00
11.	Shankar Lal	Mali D	3550	1065	710	400	400	169.00	483.00	6777.00

7. Claimants are paid more than the minimum wages as well as wages of the staff of defence unit run canteens, which fact emerge out of the table detailed below:

S. No.	Name	Trade/ Group	Paid by the Institute	Comparative Salaries	
				As per URC rates	As per Minimum Wages Act
1.	Erick Massey	Clerk C	9118.00	4590	7826
2.	Rajan Yadav	Clerk C	9118.00	4590	7826
3.	DeepChand	Waiter D	7282.00	3200	7098
4.	Patric Massey	Barman D	6946.00	3200	6422
5.	Ramesh Kumar	Waiter D	6777.00	3200	6422
6.	Bacchu Ram	Safaiwala D	7958.00	300	6422
7.	Vikram	Safaiwala D	7282.00	3200	6422
8.	Raju	Safaiwala D	6777.00	3200	6422
9.	Shyam Lal	Mali D	7619.00	3200	6422
10.	Prem Kumar	Mali D	7619.00	3200	6422
11.	Shankar Lal	Mali D	6777.00	3200	6422

8. Yearly increments are being granted to the claimants, in view of income and expenditure state of the Institute, which is a non-profit welfare organization. Attendance and identity cards have been issued to them. They are being given casual leaves, festivals leaves and earned leaves. In addition to that, they are allowed encashment of 15 days annual leave. Bonus is being given to them in consonance with provisions of the Payment of Bonus Act, 1965. They are generally not asked to work overtime. However, in exceptional circumstances overtime work, taken from them, is compensated in form of extra leave and special incentives like gifts etc. They are being provided with uniform on yearly basis. House rent allowance is being provided to them @30% of their wages. Washing allowance @ Rs.400.00 per month is paid to them. Conveyance allowance @ Rs.400.00 per month is paid to them, without any demand in that regard. All legal facilities are being provided to them. Claim put forth by the claimants has no basis, hence it may be dismissed, pleads the Institute.

9. To substantiate their claim, Shri Erick Massey entered the witness box, who was examined on 10.05.2012 and 06.09.2012. His further cross examination was deferred at the request of authorized representative of the Institute. Thereafter, time was sought by the parties to settle the dispute. However, the Institute opted to abstain away from the proceedings with effect from 23.07.2013, hence it was proceeded ex-parte vide order of that date. Under these circumstances, further opportunity could not be accorded to the Institute to purify testimony of Shri Erick Massey by an ordeal of cross examination.

10. Affidavits of Shri Ramesh Kumar and Shri Rajan Yadav were also tendered as evidence on behalf of the claimants. Since the Institute was proceeded ex-parte, hence their depositions were not tested on the anvil of cross examination. No witness was brought forward on behalf of the Institute.

11. Arguments were heard at the bar. Shri Om Prakash Sharma, authorized representative, advanced arguments on behalf of the claimants. None came forward on behalf of the Institute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

12. As projected in the claim statement, claimants assert that the Institute does not pay minimum wages to them, as notified by the appropriate Government from time to time. Shri Erick Massey deposed that the Institute does not increase their salary as and when new scales are approved by Pay Commission. They raised a demand in that regard on 03.08.2009, which was not considered. In his affidavit dated 05.03.2013, Shri Ramesh Kumar details that they are entitled for minimum wages as notified by the appropriate Government from time to time. Shri Rajan Yadav details those very facts in his affidavit dated 04.04.2013. Therefore, it is emerging over the record that the claimants assert that minimum wages, as notified by the appropriate Government from time to time, may be paid to them by the Institute.

13. Shri Erick Massey and Shri Rajan Yadav work as accounts clerk. Therefore, it would be expedient to know as to what is the minimum wages fixed for clerks by the appropriate Government. For an answer, notification No.1/11(3)/2013-LS-II, New Delhi dated 19.09.2012, issued by the Central Government, is to be examined. As emerge out of the above notification rates of variable dearness allowance were revised by the Ministry of Labour and Employment, Government of India, on increase of consumer price index. For 'A' area cities, minimum wages of a skilled clerk has been notified at Rs.377.00 per day. Minimum wages for highly skilled employee was notified at Rs.410.00 per day. Delhi is one of the 'A' area cities as per annexure annexed to the said notification.

14. Shri Erick Massey and Shri Rajan Yadav, who work as accounts clerk with the Institute, are employees of highly skilled category. Therefore, Shri Massey as well as Yadav are entitled to be paid a @ Rs.410.00 per day. Thus, minimum wages for these two claimants comes to Rs.10,660.00 per month. As projected by the Institute, Shri Massey and Shri Yadav are paid basic pay, house rent allowance, interim allowance, conveyance allowance, washing allowance, share of ESI and EPF contributions by the Institute.

15. The Minimum Wages Act, 1948, aims at preventing exploitation of labour. In an underdeveloped country because of vast unemployment, they are prepared to even work for starvation wages and for that purpose, prescribed minimum wage for employment is incorporated by the schedule. The aforesaid Act is a beneficial piece of social legislation which protects day to day living conditions of workers employed at the lowest level of wages and though minimum wages are fixed statutory, it does not measure up either to the fair wage or the living wage. The said Act defines wages as all remuneration, capable of being expressed in terms of money, payable to a person employed in respect of his employment and includes house rent allowance. For the purpose of convenience, definition of wages, enacted in the aforesaid act, is extracted thus:

> "2(h) wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include—
>
> (i) the value of—

(a) any house- accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge".

16. Minimum rates of wags fixed by the appropriate Government, in respect of scheduled employments, may consist of :

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers, or

(ii) abasic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowance for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

17. It is well settled that special allowance, as referred above, is nothing but a dearness allowance. Rise in consumer index is to be taken into account for the purpose of fixing special allowance. Dearness allowance is intended to neutralize a portion in increase in cost of living. Full neutralization may be permissible only in case of lowest class of employees. Thus, it is emerging over the record that minimum wages, fixed or revised by the appropriate Government, may consist of basic rate of wages and special allowance at a rate to be adjusted at such intervals and such manner as the appropriate Government may direct.

18. Now it would be ascertained as to whether Shri Massey and Shri Yadav are being paid minimum wages by the Institute ? As detailed by the Institute basic pay of Rs.5000, interim allowance at the rate of Rs.1000 and house rent allowance of Rs.1500 per month are paid to them. Other allowances, such as conveyance allowance, washing allowance, shares of ESI and EPF contribution would not form part of the minimum wages. Admittedly, their basic pay, interim allowance and house rent allowance comes to Rs.7500.00 per month, is less than the minimum wages, notified for their category. There is no two opinion that the Institute is paying less than the minimum wages to Shri Massey and Shri Yadav.

19. Except Shri Massey and Shri Yadav, other claimants work as waiter, barmen, mali, tea maker and safaiwala. All of them are employees of unskilled category. For an employee of unskilled category, minimum wages for 'A' area cities has been notified as Rs.310.00 per day. Minimum wages for an employee of unskilled category comes to Rs.8060.00 per month. As projected by the Institute, these claimants, who work as waiter, barman and tea maker, are paid Rs.3850.00 as basic pay, Rs.770.00 as interim allowance and Rs.1155 as house rent allowance. Therefore, minimum wages for their category is higher than the amount paid to them. Claimants, who work as mali are paid Rs.4050.00 as basic pay, Rs.810.00 as interim allowance and Rs.1215 as house rent allowance. Admittedly, they are also paid less than the minimum wages in that regard. Employees, who carry out sweeping job, are paid Rs.3850.00 as basic wages, Rs.770.00 towards interim allowance and Rs.1155 for house rent allowance. I have no hesitation in concluding that they are also paid less than the minimum wages notified by the appropriate Government. Claimants could bring to light that the Institute paid them less than the minimum wages notified by the appropriate Government. They could establish a claim for payment of minimum wages in their favour. Resultantly, it is commanded that the Institute shall pay minimum wages to the claimants, which shall be calculated while taking into consideration basic rate of wages, special allowance and house rent allowance for their categories. Other concessions, granted in favour of the claimant shall not form part of the computations, to reckon minimum wages for them.

20. Yearly increments @ 10% on the minimum wages has been claimed in the form of dearness allowance. Periodical increment in wages is granted by the appropriate Government when revision of minimum wages is made from time to time. Grant of periodical increment in wages by this Tribunal would be based on assumption that there exist a scheme of increment in wages or scale of wages. As noted above, no pay scales are available for the claimants. They are being paid minimum wages, as notified by the appropriate Government. Revision, periodical or otherwise, in respect of minimum wages is to be made by the appropriate Government in consonance with the provisions of the Minimum Wages Act, 1948. Therefore, such a claim, made by the claimants cannot be entertained by this Tribunal.

21. A faint effort was made by the claimants to substantiate their claim for grant of dearness allowance on the minimum wages, by relying the precedent in Suraj Textile Mills (1946 Lab.I.C.1412). I am afraid that the precedent comes to their rescue. As detailed therein,

settlement was entered into between the authorities of the Mills and the union representing its employees. In the said settlement, it was agreed that the employees would get fixed amount of dearness allowance on the minimum wages notified by the State of Punjab effective from 01.01.1979. The above fixed dearness allowance was paid to the employees in lieu of their claim of house rent allowance and city compensatory allowance. Subsequently, fixed dearness allowance was not paid with minimum rates of wages, enhanced by the State through its notification dated 31.12.1981. Dispute was raised in that regard. When the dispute reached the board of the High Court, it was ruled that the fixed dearness allowance, pursuant to settlement entered into between the parties, shall be paid to the employees, since terms of that settlement does not run counter to the statutory provisions. Thus, it is evident that in the precedent, relied by the claimants, fixed dearness allowance was claimed on the basis of settlement entered into between the parties. Here in the case, no such settlement was ever entered into between the Institute and the claimants. Evidently, facts of the present controversy are distinct and different than the precedent, referred above. The precedent nowhere comes to the rescue of the claimants.

22. Even otherwise, additional payment in the form of interim allowance is paid to the claimants to compensate them to a certain extent for rise in cost of living. The said allowance is being paid by the Institute on the pattern of variable dearness allowance fixed by the appropriate Government while making revision in minimum wages in respect of different schedule of employments. As ordered above, claimants shall be paid minimum wages as notified by the appropriate Government from time to time. Hence, they cannot claim yearly enhancement on the minimum wages. Their demand for yearly increment is found to be untenable.

23. Leaves with wages, in certain contingencies is one of the term of employment or conditions of labour of industrial workmen, which occasionally gives rise to industrial disputes. Various enactments have made provisions for leave with wages for commercial and industrial workmen. For instance section 79 of the Factories Act, 1948, makes provision for annual leave with wages. Section 52 of the Factories Act 1948 requires that every week, a workman should have atleast one day as holiday either on Sunday or any other day. Therefore, salary paid to a workman by week or month includes salary paid by way of holiday pay in respect of Sunday and other declared holidays. On the basis of above principles, the industrial adjudication has to make reasonable provisions for a weekly off in respect of workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act or any other analogous Act. In doing so, the industrial adjudication cannot ignore the needs of national economy.

24. As projected by the Institute, claimants are given 30 days earned leaves in a year, 10 days medical leaves, besides weekly offs. Claimants could not dispute this proposition. Therefore, it is emerging over the record that as far as claims in respect of weekly offs and leaves are concerned, the Institute had granted their rights to them. The claimants could not highlight a case for intervention by the Tribunal in that regard.

25. A workman, if his contract of service so provides, shall be entitled to accumulate leave to his credit. He can claim money compensation in terms of salary for leaves to his credit, at the time of his retirement. Facility for encashing of the leaves by a workmen can be given by an employer when he carries on his business. It cannot be claimed when the establishment has been closed or transferred. The Institute permits the claimants for encashment of 15 days leave in a calendar year. It is evident rights of the claimants are being accorded to them by the Institute in that regard.

26. Claimants nowhere dispute that attendance cards, appointment letter, identity card, and festival leaves are being provided to them by the Institute. Resultantly, there is no dispute in that regard that other legal facilities are being accorded by the Institute to the claimants.

27. Payment of Bonus Act, 1965, stipulates payment of annual bonus @8.33% to an employee. Section 10 of the said Act provides as under:

> "10. Payment of minimum bonus.- Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8. 33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:
>
> Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words" one hundred rupees", the words" sixty rupees" were substituted."

28. Claimants seek release of bonus @ 20% per annum in their favour for the period 2006-07, 2007-08 and 2008-09. Though the Institute pleads that statutory minimum bonus is being paid to them. Minimum statutory bonus would be paid to an employ even in the absence of any allocable surplus in the concerned accounting year. As projected in the present controversy, the Institute provides recreational facilities to its officers and their family members. In such a situation there may not be allocable surplus for payment of bonus at a rate higher than minimum statutory bonus.

Resultantly, by payment of minimum bonus, the Institute complies with the statutory provisions. I do not find any case to issue directions to the Institute in that regard.

29. Section 59 of the Factories Act, 1948, describes that a worker who works overtime in a factory shall be entitled to twice his ordinary rate of wages in respect of overtime work. For the purpose of calculating such over time, expression 'ordinary rate of wages' has been defined to mean basic wages plus such allowances, including the cash equivalent of the advantage accruing on account of concessional sale to workers of foodgrains and other articles as the worker is for the time being entitled to, but does not include a bonus. Section 33 of The Mines Act, 1952 also speaks in similar terms. The above provisions specifically includes dearness allowance in the definition 'ordinary rate of wages'. For workers working in factories and mines, rates of overtime have been fixed by relevant statutes. Karam Chand Thapar & Bros. Ltd. (1964(1) LLJ 429), the Apex Court laid down principles for fixing overtime allowance, which are detailed thus:

(i) overtime allowance should have relation to total wage packet, viz. basic wage dearness allowance,

(ii) it should be fixed on consideration of the financial capacity of the company, and

(iii) it should also be fixed in consonance with the practice prevalent in other concerns in the neighbourhood.

30. As projected by the union and not disputed by the Institute, claimants are paid minimum wages, as notified by the appropriate Government from time to time. Section 14 of the Minimum Wages Act, 1948 enacts that where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess of normal working hours at the overtime rate fixed under the provisions of the said Act. Precedent in Municipal Corporation, Hatta, (1998 (79) FLR 228) deals with the provisions of section 14 of the said Act. In the said case, the Apex Court took note of the provisions of section 14 of that Act and ruled that to claim overtime under section 14, following conditions must be fulfilled by an employee:

(1) the minimum rate of wages should be fixed under the Minimum Wages Act, 1948; and

(2) such an employee should work on any day in excess of the number of hours, constituting a normal working day.

31. The Court ruled that overtime under section 14 is payable to those employees who are getting a minimum rate of wage, as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under section 14 would become payable. The Apex Court announced that in the present case the respondents cannot be described as employees who are getting minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. Resultantly section 14 has no application to them.

32. The Apex Court also took note of the proposition that the employment of the respondents was under "any local authority", listed as item 6 in the Schedule to the Minimum Wages Act, 1948, according to which they are entitled and automatically get overtime under section 14 the said Act. Considering that proposition, the Court ruled that the employees who are getting minimum rates of wages under the Minimum Wages Act, 1948 are only eligible to get over time allowance under section 14 of the said Act. Observations made by the Apex Court in that regard are extracted thus:

> "The application under section 22 of the Minimum Wages Act, is, therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any Local Authority is listed as Item 6 in the Schedule to the Minimum Wages Act, 1948 they would automatically get overtime under the said Act. Section 14, however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory Rules."

33. In Y.A. Mamarde (1972(25) FLR 186) wherein the Apex Court had dealt with provisions of rule 25 of the Minimum Wages (Central) Rules 1950 (in short the Rules) and declared that the expression 'ordinary rate of wages' used in that rule reflects what a workman has actually received rather than worker's minimum entitlement under the Act. By using the phrase "double the ordinary rate of wages" the rule-making authority seems to us to have intended that the worker should be the recipient of double remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. It has been commanded by the Apex Court that rule 25 of the Rules contemplates for overtime payment at double the rate of wages which the worker actually receives, including the casual perquisites and other advantages mentioned in the explanation. This rate is intended to be the minimum rate for wages for overtime work. It was concluded therein that the minimum rates of wages for overtime work need not as a matter of law be confined to double the minimum wages fixed but may justly be fixed at double the wages ordinarily received by that workman as a fact.

34. Whether there is any conflict in law laid in precedent in YA Mamarde (supra) and Municipal Council, Hatta (supra)? When these two precedents are scanned, it emerges that in YA Mamarde(supra), the Apex Court only interpreted rule 25 of the Rules and did not deal with provisions of section 14 of the Act. On the other hand, precedent in Municipal Council Hatta, the Apex Court interpreted the provisions of section 14 of The Minimum Wages Act, 1948. Consequently, it is clear that there is no conflict in the above two judgements handed down by the Apex Court. In Sushil Kumar, (LPA No.13 of 2003 decided on 03.12.2003) High Court of Delhi was confronted with such a proposition when parties raised an issue to the effect that there was conflict in law laid in the two precedents handed down by the Apex Court. On consideration of the ratio laid down in the two precedents, the High Court ruled that there was no conflict in the two judgements since they operated in different areas. Hence law laid in Municipal Council, Hatta (supra) would be applicable to the case, since it has four dimensional application to the facts.

35. In National Airport Authority [2010 (127) FLR 111], Single Judge of the High Court was to consider the proposition whether 74 workers drawing more than the notified minimum wages and enjoying other amenities and conditions of employment better than those provided under the Act and Rule's were entitled to payment of overtime rates in accordance with the provisions of rule 25 of the Rules. Relying the precedent in Municipal Council, Hatta (supra), High Court ruled that an employee even if in scheduled employment but drawing more than minimum wages and enjoying better terms of employment than under the Act and Rules, is not entitled to overtime at double the rate as provided under the Rule. Law laid down by the High Court is reproduced thus:

> "I may however state my reasons for preferring the view in Municipal Council, Hatta, of the employee even if in scheduled employment but drawing more than minimum wages and enjoying better terms of employment than under the Act and the Rules, being not entitled to overtime at double the rate as provided in the Rules. The Minimum Wages Act, 1948 was only intended to secure minimum wages and certain other conditions in scheduled employment. It was not intended to and/or is not a legislation to otherwise govern the contract of employment between an employer and an employee drawing more than the minimum wages, even in scheduled employment. If an employee in a scheduled employment is drawing more than the notified minimum wages and enjoying amenities, facilities and conditions of employment better than those provided under the Act and the Rules, then holding the provisions of the Act to be still applicable to the employee would tantamount to the legislature interfering in terms of employment in the scheduled industry rather than securing minimum wages and related conditions of employment in such employment. The Supreme Court in Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra (2006(8) SCC 514) held that even while interpreting a beneficent statute (in that case the Payment of Gratuity Act) either a contract has to be given effect to or the statute. It was held that the Gratuity Act under consideration in that case, did not contemplate that the workmen would be at liberty to opt for better terms of the contract while keeping the option open in respect of a part of the statute; he has to opt for either of them and not the best of the terms of statute as well as those of the W.P.(C) No.2146/1992 Page 9 of 11 contract and that he cannot have both. A reading of the Minimum Wages Act, 1948 also shows that its scheme is to ensure fixing of hours of work and minimum wages therefor. It also does not envisage interference with the terms of employment even in scheduled establishments where workmen/employees are enjoying wages more than the minimum and working hours/conditions better than those prescribed in the Act. Section 14 of the Act provides for work over and above the time for which the workman is to work in lieu of minimum wages. If the workman is working for lesser hours than those for which he is required to work to earn the minimum wage, then the computation of overtime as done in the Rules on the said premise cannot be made applicable to him".

36. The Institute nowhere projects that the claimants are getting wages and amenities better than those fixed under Minimum Wages Act, 1948. As projected by the Institute, claimants are paid minimum wages notified by the appropriate Government from time to time. In that situation, claimants can put forth a claim for overtime allowance in consonance with rule 25 of the Rules. In its pleading, the Institute highlights that as and when claimants were asked to work overtime, they are compensated by way of grant of special leaves or special incentives in the form of cash/gift, prizes etc. Special leave or incentive in the form of cash can not be a substitute for overtime allowance. Hence the Institute is commanded that as and when overtime work is taken from the claimants, they shall be paid twice their ordinary rates of wages in respect of overtime work done by them.

37. Two pairs of summer and winter uniforms, besides shoes, gloves and socks are demanded by the claimants. They nowhere dispute that uniforms besides shoes, gloves and socks are given to them. On the other hand, washing allowance @ Rs. 500.00 per month is also paid to them. Thus, it is evident that the claim put forth in that regard has already been granted to them by the Institute. No further directions are needed in that regard.

38. House rent allowance @25% of their earned wages is the other demand raised by the claimants. The Institute pays them 30% house rent allowance on the wages granted to them. In such a situation, it is not a case that the claimants can make out a case for issuance of instructions to the Institute in that regard.

39. In view of foregoing reasons the Institute in commanded to pay minimum wages, besides other benefits as detailed above, to the claimants. Difference of wages paid less than the minimum wages shall also be released in favour of the claimants at the earliest, not later than three months from the date the award becomes enforceable, under section 17A of the Industrial Disputes Act, 1947. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 28.2.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नागालैंड पल्प एण्ड पेपर कंपनी लिमिटेड एंड एच पी सी एल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 1/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42011/125/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 01/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NPPCL, Nagaland and HPCL, Kolkata and their workmen, which was received by the Central Government on 20/03/2014.

[No. L-42011/125/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

PRESENT :

Shri L.C. DEY, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No.01 of 2013

In the matter of an Industrial Dispute between :-

The President/The General Secretary, Workers' Union, Nagaland Pulp & Paper Company Ltd., (NPPCL), Nagaland.

-Vrs-

The Management of (1) NPPCL, Nagaland and (2) HPCL, Kolkata.

APPEARANCES :

For the Workman : Mr. D. Baruah, Advocate,
Ms. B. Das, Advocate,
Mr. B. Barman, Advocate.

For the Management : Mr. S. Sarma, Advocate.
Mr. S. Barthakur, Advocate,
Mr. C. Chakrabarty, Advocate,
Mr. J. Roy, Advocate,
Mr. R. Hazarika, Advocate,
Miss S. Kakoti, Advocate.

Date of Award: 21.11.13

AWARD

1. This Reference has been initiated on an Industrial Dispute exists between the employers in relation to the Management of Nagaland Pulp and Paper Company Ltd. (NPPCL) and their workman, which was referred to by the Ministry of Labour, Government of India under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the ID Act vide their order No.L-42011/125/2012-IR(DU), dated 21.12.2012 in respect of the matter specified in the Schedule below:

SCHEDULE

"Whether the action of the management of Nagaland Pulp & Paper Company Limited (NPPCL) in denying implementation of 6th Central Pay Commission Pay Structure for the workers of NPPCL w.e.f. 01.01.2007 is valid & justified? If not, what relief the concerned workmen of NPPCL are entitled to?"

2. After registration of this Reference notices were issued upon both the Union and the Management of NPPCL, Nagaland and HPCL, Kolkata, (since they were made party to this Reference). Accordingly both the parties appeared along with their learned Advocates. The Management submitted their W.S. while the Union although appeared through their learned Advocate and sought for adjournment for filing claim statement on different occasions. Subsequently the learned Advocate for the Union appeared and submitted petition being No.676/13 dated 11.9.2013 stating that the Union has decided to discontinue the engagement of the said learned Advocate who has also returned the brief along with the relevant documents in connection with this present reference to the Union; and prayed for allowing them to withdraw the vokalatnama. Accordingly the prayer of the

learned Advocate was allowed and notice was issued upon the Union to appear and contest the proceeding but the Union remained absent without any step in spite of causing service of notice upon them by registered post with A/D. In the mean time the Management is also found absent since 13.11.2013. Thereafter this reference was fixed for filing claim statement by the Union/for hearing of the Management side if any fixing 21.11.2013. On that day both the parties are found absent without any step. Finding no other alternative the hearing of this reference is closed and hence, this reference is taken up for disposal on merit on the basis of the materials available on record.

3. The Union has not submitted any claim statement in spite of allowing them sufficient opportunities as mentioned in the foregoing paragraphs. The Management of both the NPPCL, Nagaland and HPCL, Kolkata submitted their written statement separately taking the common plea.

The Case of the Management of both the NPPCL, Nagaland and HPCL, Kolkata, in brief, is that the Nagaland Pulp and Paper Company Ltd. (herein after called the NPPCL) was incorporated in the year 1971 under the Companies Act,1956 as amended, which is a Corporation having its perpetual succession and common seal and it was commissioned in the year 1982. However, since 1992 the production of the NPPCL completely stopped and as such, it sustained continuous loss and the company could not regain its position and became sick. Thereafter the NPPCL was referred to Board for Industrial and Financial Reconstruction (herein after called BIFR) after becoming a sick industry and subsequently BIFR approved the revival plan vide communication dated 27.06.2007. The Draft Rehabilitation Scheme approved by the BIFR of NPPC envisages 1997 Pay Structure for its employees and the matter was taken up with the DHI which communicated the approval of the competent authority by their letter dated 17.11.2008 and accordingly the said pay structure was implemented in NPPCL in December,2008 with effect from 27.06.2007 under the head 'cash loss' in plan budgetary support sought by NPPC for the year 2007-08. The Assistant Labour Commissioner (C), Government of India, Silchar requested the NPPCL, Nagaland to offer their demand/present status in respect of implementation of 6th Pay Commission pay structure for the workers of NPPC on the basis of the letter submitted by the President, General Secretary of the Union. The Management, vide their letter No. NPPC:HR & ES, Wr/1/11 dated 25.02.2011 the Deputy General Manager (HR & ES) submitted the detail report before the Asstt. Labour Commissioner (C), Silchar, Assam in respect of implementation of 6th Central Pay Structure. However, the opposite party clarified that HPC and its subsidiaries are following the Industrial Dearness Allowance pattern of pay structure and therefore the Asstt. Labour Commissioner (central), Silchar intimated the NPPCL, Nagaland to attend the joint discussion/ conciliation on 28.4.2011 in respect of implementation of 6th pay commission to the employees of the Corporation and accordingly the conciliation proceeding took place on 27.5.2011. But the claimant/union sought time to submit rejoinder application on receiving such application the NPPCL was requested to examine the rejoinder application. The union vide their letter dated 20.06.2011 submitted the rejoinder application before the Asstt. Labour Commissioner, Silchar who issued notice upon the NPPCL to attend the conciliation proceeding on 08.09.2011. The Union again vide their letter dated 05.09.2011 submitted Additional rejoinder application before the ALC(C), Silchar. The conciliation proceeding was held on 08.09.2011 and the Labour Commissioner requested the NPPCL to look into the contents enumerated in the rejoinder application dated 20.6.2011 and 5.09.2011. The Management stated that the Under Secretary to the Govt. of India vide letter dated 07.10.2011 sanctioned a non plan loan of Rs. 1.75 Crores to HPC to meet the expenditure for payment of outstanding salary and wages of the employees of the NPPCL from 01.01.2011 to 31.03.2011. The ALC (C), vide letter No.8(06)/2011-S/A dated 25.10.11 issued notice to the NPPCL to attend the conciliation proceeding on 14.11.2011 but the said proceeding was adjourned till outcome of the order be passed by the Hon'ble Supreme Court in SLP(C) 33759/10 and the Union/Claimant challenged the order dated 31.08.2010 passed by the Hon'ble High Court in WA No. 512/1997 claiming the wages at revised rates for the period from 01.01.1992 to 25.06.2007. However, the Hon'ble Supreme Court vide order dated 30.01.13 was pleased to dismiss the petition. Thereafter the ALC (C), Silchar issued notice dated 16.01.12 to the NPPCL to attend the conciliation proceeding and accordingly they attended the conciliation but it failed. The Management averred that in paragraph-2 of OM No. 2/11/96-DPE(WC)-GL-1 dated 14.01.1999 issued by the DPE regarding the policy for the 6th round of wage negotiation in public sector enterprise provided that as regard sick units registered with BIFR, approves revival plan of such enterprise in which provision have been made for additional expenditure on account pay revision, no revision of pay would be allowed to the employees of such enterprises. Being the position since the BIFR approved the revival plan and provision was made for additional expenditure on account of pay revision, which got implemented in NPPCL which has not yet started the production of paper and wages of the staff being funded by the HPC who in turn took loan from the Government of India on high rate of interest. It is also mentioned that the guidelines issued by DPE for 7th round of wages negotiation in CPSE dated 01.01.2007 clearly states that the Management of the CPSE would be free to negotiate the wage structure for the unionized workmen keeping in view and consistent with the generation of the resources/profit by the concerned enterprise. However, no budgetary support for the wage increase shall be provided by the government under any circumstances. The resources for meeting the increase

obligation for implementation of wage revision must be internally generated and must come from improved performance in term of productivity and profitability and not from the government subvention.

The Management mentioned that at present the Corporation does not have enough resources to revise the pay scale of the NPPCL and as the Corporation incurred a net loss of Rs.1190.05 lakh as on 31.03.2012 and the accumulated losses incurred by the company till 31.03.2012 to Rs. 8393.36. The quantum of loss incurred by NPPCL during last 3 years i.e. 2009-10, 2010-11, 2011-12 amounting to Rs. 1438.03, Rs. 1343.60 and Rs.1190.05 respectively.

Further contention of the Management is that the draft Rehabilitation Scheme for NPPCL envisages 1997 pay structure for the workman of NPPCL and the said pay structure was implemented with effect from 27.06.2007 after getting approval from the competent authority as communicated vide DHI letter No. 8(84)/2007—PE VII dated 17.11.2008 and after signing the Memorandum of Settlement with the workers Union of NPPCL on 03.12.2008 in presence of Joint Commissioner-State Conciliation Officer, Government of Nagaland; and in the clause18.4 of the said MOU it was clearly mentioned that during the operation of MOU no demand(s) having monetary value/ financial implementation whatsoever nor any dispute can be raised in respect of matters settled in this MOU made by the Union. So the Union under the aforesaid MOU can not claim the revision of wages under 6th Pay Commission as such, the 6th Central Pay Commission pay structure can not be acceded to as the same is not maintainable.

4. From the above it appears that the Union being the claimant who raised the dispute have not come forward to substantiate their claim and as such, I am constrained to rely upon the W.S. along with the documents submitted by the Management. On perusal of the W.S. and the documents, it appears that the NPPCL has become a sick industry for which the Government of India vide their letter dated 7.10.2011 marked as Annexure-9 sanctioned a non plan loss for Rs.1.75 Crore to the HPC to meet the expenditure for payment of outstanding salary and wages of the employees of NPPCL from 1.11.2011 to 31.3.2011. In this connection conciliation was held in presence of the Assistant Labour Commissioner (Central), Silchar but the said conciliation proceeding was adjourned till out come of the order passed by the Hon'ble Supreme Court in SLP (C) 33759/10 preferred by the Union challenging the order dated 31.8.10 passed by the Hon'ble High Court in Writ Appeal No. 512/1997 whereby claiming the wages at revised rate for the period from 1.1.1992 to 25.6.1997. However, the Hon'ble Supreme Court vide order dated 30.1.2013 was pleased to dismiss the petition. Thereafter another conciliation was held at the instance of the Assistant Labour Commissioner (C), Silchar but it failed. The extract from the part-2 of OM No. 2/11/96-DPE(WC)-GL-1 dated 14.1.1999, the wages policies and related matters- a Wage Policy/Pay Revision/ HPPC recommendation regarding policy for 7th round of wage negotiation for unionized worker in central public sector enterprises with effect from 1.1.2007, marked as Annexure-12 produced by the Management, shows that the Management of CPSEs would be free to negotiate the wage structure, for the Unionised workmen keeping in view and consistent with the generation of resources/profits by the concerned enterprises and no budgetary support for the wage increase shall be provided by the Government under any circumstances; and the resources for meeting the increased obligation for implementation of wage revision must be internally generated and must come from improved performance in terms of productivity and profitability and not from Government subvention. It is also provided in the said memorandum that as regards sick CPSEs registered with Board for Industrial and Financial Reconstruction (BIFR), until BIFR approves the revival plan for such enterprise in which provision has been made for additional expenditure on account of wage revision, no revision of wage would be allowed to the employees of such CPSEs.

It is also revealed from the W.S. submitted by the Management along with the Memorandum of Understanding (marked as Annexure-13) between the Management of NPPCL and its recognized Union, which was arrived at in presence of Joint Labour Commissioner-cum-State Conciliation Officer, Labour Department, Government of Nagaland, that 1997 pay structure for the workman of NPPCL was implemented for the employees of NPPCL with effect from 27.6.2007 after getting approval from the competent authority. In the said MOU in clause-18.4 it was provided that during the operation of MOU no demand(s) having monetary value/financial implementation whatsoever nor any dispute can be raised in respect of the matters settled in the said MOU.

5. From the above discussion it is revealed that the NPPCL is sick industry running loss and it has not yet started its operation and production and as per the terms of MOU as well as the government instruction regarding revision of pay of the employee of the sick industry the Union cannot claim for revision of their pay at par with the 6th Central Pay Commission pay structure. Further the MOU arrived at between the Management NPPCL and the representative from the workers Union, on 22.11.2008 which was countersigned by the Joint Labour Commissioner-State Conciliation Officer, Labour Department, Government of Nagaland, Kohima on 3.12.2008 shall be binding on the parties to the agreement in Section 18 of Industrial Dispute Act, 1947 which runs as follows:-

"18. Persons on whom settlements and awards are binding- (1) A settlement arrived at by agreement between

the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on –

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

6. In view of my above discussion and having regard to the provision of Section 18 of the Industrial Dispute Act, I am of the opinion that the claim of the workman as mentioned in the Schedule to this reference is not valid and justified.

In the result, this Reference is decided in negative granting no relief against the Union. Send the no relief award to the Government as per procedure.

Given under my hand and seal of this Court on this 21st day of November, 2013, at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एनटीसी लिमिटेड, कोयम्बटोरे के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 82/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42011/08/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 82/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, NTC Ltd., Coimbatore and their workmen, which was received by the Central Government on 20/03/2014.

[No. L-42011/08/2012-IR(DU]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 19th February, 2014

Present : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 82/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of National Textile Corporation and their workman).

BETWEEN

The General Secretary : 1st Party/Petitioner Union
NTC Mills Workers and
Staff Union
4/121, Kamaraj Nilayam
Pannimadai P.O.
Coimbatore

AND

The General Manager : 2nd Party/Respondent
NTC Ltd., NTC House
P.O. Box No. 2049, 35-B
Somasundaram Mills Road,
Coimbatore

APPEARANCE :

For the 1st Party/ Petitioner Union : Sri G. Muthu, V.P. Rajendran, Advocates

For the 1st Party/ Respondent : M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-42011/08/2012-IR (DU) dated 19.10.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of NTC mill management, Coimbatore for non-implementation of sixth pay commission recommendations to all employees of NTC Mills, Southern Region, Coimbatore is justifiable or not? To what relief, the employees are entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 82/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed a rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement in brief are these:

The petitioner is a union functioning in National Textiles Corporation (NTC) which is a Public Enterprise. The NTC Management has not implemented 6th Pay Commission Recommendations to all employees of the NTC. On the other hand, many Public Sector Units like Neyveli Lignite Corporation, Bharat Heavy Electricals Ltd., etc. have implemented the recommendation. The wages for the employees of the textiles mills are based on awards and settlements It is not in consonance with inflation. The Pay Commission Recommendations are applicable to all Public Sector Units. Textile mills like Anglo French Textiles under Pondicherry Union Govt. has adopted this for the textile sector also. The dispute raised by some of the unions and pending before the Industrial Tribunal, Tamil Nadu is in respect of the employees of Tamil Nadu mills under NTC only. The recommendations of the 6th Pay Commission Recommendations, if implemented would benefit all the employees of the Southern Region in Kerala, Karnataka, Andhra Pradesh and also Tamil Nadu under the management and control of National Textile Corporation. An award may be passed extending the benefits of 6th Pay Commission Recommendations to all classes of employees including staff and workmen.

4. The Respondent has filed Counter Statement contending as follows :

Prior to 1974 a number of textile mills in the country became sick. They were notified as sick relief industrial undertakings. The National Textile Corporation Ltd. was established and various sick textile mills came under the purview of the subsidiary companies that were formed under the National Textile Corporation Ltd. The NTC Company was having on its rolls Officers and other employees on deputation from the Central Government enjoying pay scales and other service conditions determined by the Central Pay Commission. Such employees in the Corporation Office and the subsidiary companies also were governed by the recommendations of the Central Pay Commission. However, the workmen who were mostly called operatives and staff in textile mills were governed by pay scales and other service conditions which were evolved in the respective regions following the recommendations of the 2nd Central Wage Board for Textile Industry. On behalf of Clerical and other staff working in the textile mills writ petitions were filed seeking extension of the Central Pay Commission recommendations which were applicable to the staff of the corporate office of the subsidiary companies and the holding company under the claim that they were doing the same kind of work. The Supreme Court has held that the work done by them are not similar. However, some relief was granted to the staff working in the mills. Subsequently, there was another revision of wages by settlement dated 11.09.2007. This was to remain in force from 01.04.2007 to 31.03.2012. If computerization could not be introduced by 31.03.2012 the settlement was to remain valid for a further period of 5 years. As full computerization could not be introduced in the mills, the settlement is still in operation. So far as the workmen are concerned, the award passed by the Special Industrial Tribunal was in force. After this, a dispute was raised and the reference made consequently is still pending. Even while it is pending a settlement was reached on 08.01.2009. This was to be in force for a period of 5 years from 01.01.2008. By this settlement it was agreed that further demand resulting in any financial commitment will not be made. So it is not permissible for the petitioner also to contest the issue. The total number of workmen in all the 15 mills under the NTC comes to 4000. There are about 200 other staff also. The petitioner union has only 84 workmen on its rolls, all of them in Murugan Mills, Coimbatore. The petitioner has got only 2% membership of the entire members and therefore has no representative capacity to raise the dispute on behalf of the workmen of 15 textile mills in the Southern Region. The mills under the National Textiles Corporation are continuously incurring loss. It has no capacity to bear additional financial burden. So it is not permissible for the petitioner to claim increase in wages. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder reiterating the case in the petition and also countering the facts stated in the counter statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W17 and Ext.M1 to Ext.M17.

7. **The points for consideration are** :

(i) Whether the refusal of the Respondent to implement the recommendations of the 6th Pay Commission to all employees of NTC Mills of Southern Region is justifiable?

(ii) What is the relief to which the employees are entitled to?

The Points

8. The NTC Mills Workers and Staff Union which is one of the several unions representing the staff and workers of the textile unions under the Respondent has raised the dispute claiming that the staff and workmen are entitled to the benefits as recommended by the 6th Pay Commission. The members of petitioner union are all in Murugan Mills, Coimbatore. The workers or staff of other textile units under the NTC are not in the rolls of the Petitioner Union.

9. The petitioner has claimed that all the workers and staff of the different units of the NTC in the Southern Region are entitled to the benefits of the 6th Pay Commission. It is alleged by the petitioner that the benefits recommended by the 6th Pay Commission has been extended to only a few of the staff. It is claimed that this is discriminatory and all are entitled to have the benefits. To substantiate the claim it is stated by the petitioner that the Public Sector Undertakings like BHEL and NLC have implemented the recommendations of the 6th Pay Commission. According to the petitioner, the Pay Commission Recommendations are applicable to all Public Sector Units also.

10. All the above claims made by the petitioner are effectively countenanced by the Respondent. It is pointed out by the counsel for the Respondent that the Pay Commission recommendations are not intended to the workers or other staff of the Public Sector Units. The recommendations of the Pay Commission would have force only if it is approved by the Government. It is not necessary that the entire recommendations made by the commission are accepted by the Government. The counsel has supplied the copy of the 6th Central Pay Commission report. The introductory portion of this would show what are the terms of reference of the Commission. It is to govern the structure of pay, allowances and other facilities for the categories of employees including Central Government Employees, personnel belonging to All India Services, Defence Forces, Union territories, Officers and Employees of Indian Audit and Accounts Department and Members of the Regulatory Bodies set up under the acts of the Parliament. Thus, it is clear that the staff and workmen of the Public Sector Undertakings did not come under the purview of the Commission. On the basis of the report of the commission, accepting some of the recommendations of the commission, the government has issued a notification regarding the revised pay for Central Civil Services. Rule-2 of this states that it shall apply to persons appointed to Civil Services and posts in connection with the affairs of the Union whose pay is debitable to the Civil Estimates as also to persons serving in Indian Audit and Accounts Department. This also makes it clear that it will not apply to those working in Public Sector Undertakings.

11. The argument on behalf of the petitioner is that the recommendations of the Commission were implemented by the BHEL and NLC which are Public Sector Undertakings. Probably, the recommendations might have been accepted by these units and implemented by them. It does not mean the recommendations should per se be accepted by the NTC and the benefit should be extended to the workmen and staff of the Corporation also. According to the petitioner, some of the staff of the Corporation are also getting the benefits of the Pay Commission. This has been properly explained by the Respondent. The Respondent is a Company which had been formed based on the then requirement. Several textile mills of the country had become sick and these were taken over by the Government by the Sick Textile Undertakings (Nationalization), Act, 1974. Nine subsidiary companies were also formed. The textile mills which were vested with the Government on nationalization and transferred to the Respondent came under the purview of the different subsidiary companies depending on their location. The Respondent Company as well as the subsidiary companies were having offices on their own rolls and also on deputation from the Central Government and they were enjoying pay scales and other service conditions recommended by the Central Pay Commission and implemented by the Government. Apart from these persons, no one else working in different textile units were enjoying this benefit. Those employees who were enjoying the benefits were already in the service of the Govt. and were entitled to continue to enjoy the same.

12. The petitioner has also stated in the Claim Statement that the Anglo French Textiles under Pondicherry Union Government has implemented the recommendations of the 6th Pay Commission. However, this also will not help the petitioner. Of course, if the Respondent Corporation decides to implement the recommendations of the Pay Commission it is well and good. However, it is a policy decision to be taken by them. The petitioner cannot claim the benefits of the 6th Pay Commission Recommendation as a matter of right.

13. The petitioner has stated that disparity is existing in the wages between those who are enjoying the benefits recommended by the Pay Commission and those others like the workers and staff of the different textile units working under the NTC. According to the petitioner, the Apex Court has directed that equal pay should be given for equal work. It is argued that on this basis also the

workers and staffs of the textile units are entitled to have the benefits of the Pay Commission. The relevant Supreme Court judgment has been produced by the petitioner and is in fact marked as Ext.W5. According to the petitioner, the Apex Court had directed revision of pay to the staff and sub-staff working in the mills. In the above case, the staff and sub-staff engaged by the various textile mills under the NTC had claimed equal pay for equal work. The Apex Court has found that the nature of duties of the staff in the two categories is not at par and therefore demand for parity in pay scale is not tenable. In spite of this dictum laid down, the Apex Court has stated that there cannot be total denial of revision of pay to the staff and sub-staff working in the mills. The Apex Court has stated that the workers deserves some relief though not in parity of pay scales with staff / sub-staff working in corporate offices but on account of revision of pay-scales, increase of DA or emoluments from time to times, as and when fell due during the period of nearly three decades since when, no revision of their pay-scales has been made. Thus, it could be seen that the above direction was given by the Apex Court since no revision of pay was given to them for almost three decades. It was not a case of treating the staff and sub-staff of NTC in par with the employees under the Government. Again, the direction was not in respect of the workmen but only in respect of the staff and sub-staff.

14. The above judgment of the Apex Court was rendered on 14.10.2003 Subsequently, there has been revision of wages by negotiation between the workers and settlement was effected. Wages of the staff category was revised by settlement dated 11.09.2007. This was to remain in force from 01.04.2007 to 31.03.2012. The copy of the settlement is marked as Ext.M6. The concluding portion of the settlement states that it would be in force for a period of 5 years from 01.04.2007 within which period for computerization with reduction in staff strength will be implemented in all units covered by the settlement. The present dispute was raised even while the settlement was in force, on 03.05.2011 as seen from Ext.W1 the letter making the demand by the petitioner. So far as the workmen are concerned another settlement was effected on 08.01.2009. It is to be in force for a period of 5 years from 01.01.2008. The settlement is marked as Ext.M3. Clause-10 of this settlement states that both parties unanimously agree that the settlement will be in force for a period of 5 years from 01.01.2008 so this was also in force at the time when the dispute was raised. Ext.M3 comprises of two different settlement entered into with two different unions. In fact WW1 who is the General Secretary of the Petitioner Union has also signed this settlement. It has been admitted by WW1 during his cross-examination that the settlement was in force when the dispute was raised. The counsel for the Respondent has referred to the decision reported in 1968 1 LLJ 555 where it has been held that during the currency of a settlement dispute under same issue could not be raised. For the very reason that the dispute was raised during the currency of the settlement the same is not maintainable.

15. Lastly it has been pointed out by the Counsel for the Respondent that the petitioner is not competent to represent the 4000 workmen of the 15 mills situated in Tamil Nadu, Kerala, Andhra Pradesh, Karnataka and Puducherry. The membership of the petitioner is among the workmen of Murugan Mills, Coimbatore only. As admitted by WW1 himself the total number of workers in the mill is only 420. According to MW1, examined on behalf of the Respondent, the petitioner has membership of 100 workers. The result of the referendum conducted for recognition of Trade Unions in the unit of NTC in Tamil Nadu has been supplied. The percentage of votes obtained by the petitioner union is 3.2 and total number of votes obtained is 95. The referendum was in respect of the units in Tamil Nadu only and the total number of the electorate is 2952. Even in this, the representation of the petitioner is only 3.2% only. The petitioner has stated in the petition itself that a dispute has been raised on behalf of the workmen of Tamil Nadu in the unit of NTC and that it is already pending before the Tamil Nadu Industrial Tribunal. The claim made by the petitioner is that the present dispute is on behalf of the employees of the units in Kerala, Karnataka and Andhra Pradesh and also Tamil Nadu. Thus they are claiming to be representing a very large number of work force.

16. It is argued by the Counsel for the Respondent that the petitioner is not entitled to raise the dispute since they represent only a very small number of workmen. The counsel has referred to the decision in the MANAGEMENT OF MADURA MILLS CO. LTD. VS. THE INDUSTRIAL TRIBUNAL, MADRAS AND OTHERS reported in 1973 2 LLJ 341 in this respect. In the above case it was held that the evidence to show that the petitioner has got support of a substantial number of employees is vague. The order of the Tribunal was quashed and the matter was remitted back to the Tribunal for consideration afresh. In the decision WAZIR SULTAN TOBACCO CO. LTD. VS. STATE OF ANDHRA PRADESH reported in 1964 1 LLJ 622 the Andhra Pradesh High Court has held that the cause of the dismissed employee was espoused by 104 workmen out of 2170 workmen and it cannot be said to be substantial. In fact the petitioner union who is having the membership of 95 members is claiming to espouse the cause of 4000 workers who are represented by the several unions. Certainly, the petitioner could not be said to be having substantial representation. The counsel for the Respondent has referred to the Supreme Court decision NEWSPAPERS LTD. VS. INDUSTRIAL TRIBUNAL, UP AND OTHERS reported in 1957 2 LLJ 1 where it was held that making of a reference is not destructive of the rights of an aggrieved party to

show that what was referred was not an "*industrial dispute*" at all and therefore the jurisdiction of the Tribunal to make the award can be questioned, even though factual existence of a dispute may not be subject to a party's challenge. In the absence of a substantial representation, the dispute raised by the petitioner could not be said to be an "*industrial dispute*" coming under Section-2K of the Industrial Disputes Act. For this reason also, the petitioner is not entitled to any relief.

17. In view of my discussion, the petitioner is not entitled to any relief.

The reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th February, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri P.D. Mohanraj

For the 2nd Party/ Management : MW1, Sri N. Gunasekaran

Documents Marked on the side of the Petitioner

Ex.No.	Date	Description
Ex.W1	03.05.2011	Copy of the ID raised by the Union
Ex.W2	04.05.2011	Copy of the letter by the Union to the Management
Ex.W3	30.08.2011	Copy of the failure report by the Assistant Labour Commissioner
Ex.W4	19.12.2013	Copy of the order by the Ministry of Labour – Notice in ID 82/2012
Ex.W5	2004	Supreme Court Judgment made in 2004(1)LLN 32
Ex.W6	13.04.2004	Copy of granting relief by the Ministry of Textiles
Ex.W7	02.03.2005	Copy of the circular by NTC
Ex.W8	05.10.2006	Statement of Arbitrator (JCL)
Ex.W9	16.10.2006	Copy of the settlement u/s 12(3) of the ID Act.
Ex.W10	14.12.2011	Copy of the settlement u/s 12(3) of the ID Act.
Ex.W11	03.02.2012	Copy of the letter by NTC to the Union
Ex.W12	04.08.2012	Copy of the revision of Pay Scale
Ex.W13	Jan. 2013	Pay bill of the Mohanraj and others
Ex.W14	31.01.2013	Copy of the Office bearers of the Union
Ex.W15	23.01.1990	Copy of Registration Certificate of the Union
Ex.W16	10.07.2012	Copy of the Union Annual Report "E" form submitted to the Registrar of Trade Union
Ex.W17	-	Bye Laws of the Union

Documents marked on the side of the Management

Ex.No.	Date	Description
Ex..M1	23.02.1987	Thiru K.E. Varadhan Award
Ex.M2	29.11.1996	Thiru K. Natarajan Award
Ex.M3	08.01.2009	Settlement
Ex.M4	-	Statement of number of Clerical Staff Workmen in each of the 15 mills in Southern Region
Ex.M5	-	BIFR – Reference
Ex.M6	11.09.2007	Settlement
Ex.M7	05.03.2013	Settlement
Ex.M8	03.12.2012	Proceedings of the Misc. Application hearing before
	06.12.2012	BIFR the II Bench – in Misc. – Application No. 429/2012 – BIFR Proceedings
Ex.M9	20.09.2010	National Textile Corporation Ltd. – Southern Regional office – Consolidation – Balance Sheet, Profit and Loss A/c for the year ended 2009 and 2010
Ex.M10	20.10.2011	For the year ended 2010-2011
Ex.M11	20.11.2012	For the year ended 2011-2012
Ex.M12	2012-2013	For the year ended 2012-2013
Ex.M13	19.12.2010	Election of Union by Secret Ballot – Results – Recognition of Four Trade Unions
Ex.M14	18.12.2013	Charter of Demands – Jointly by (1) CBE Periyar District Dravida Panjalai Thozhilalar Munnetra Sangam (L&F), (2) Kovai Mandala Panjalai thozhilalar Sangam (NDLF), (3) Kovai Mavatta Mill Thozhilalar Sangam (CITU) and (4) Desiya Panjalai Thozhilalar Sangam (INTUC) – addressed to Chief General Manager, NTC Ltd., Coimbatore

Ex.M15	23.08.2013	Letter from NTC Ltd., New Delhi addressed jointly to the above 4 Recognized Unions – Recording the discussions with Hon'ble MP alongwith the Union and Management representatives
Ex.M16	12.11.2013	Letter from NTC Ltd., CBE – addressed to four (4) Recognized Unions – for continuation of discussion on 15.11.2013 on Charter of Demands
Ex.M17	13.11.2013	Notice for a meeting for Rationalization of Clerical Staff category on 16.11.2013

नई दिल्ली, 20 मार्च, 2014

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर टेलिकॉम, नागपुर के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/109/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-40012/03/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/109/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director Telecom Nagpur and their workman, which was received by the Central Government on 20/03/2014.

[No. L-40012/03/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/109/2003

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Deepak Kumar Dohare,
H. No. 416, Near Kali Mandir,
Banarasidas Mohalla,
Phaphoond Chouraha,
Distt. Oraiyya (UP) .....Workman

Versus

The Director Telecom,
RE Project,
46, Bajaj Nagar, Nagpur .....Management

AWARD

(Passed on this 4th day of March 2014)

1. As per letter dated 9-6-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/3/2002-IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Director Telecom, RE Project, Nagpur in terminating the services of Shri Deepak Kumar Dohare w.e.f. 30-8-90 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/4. Case of Ist party workman is that he was initially appointed in April 1988 in establishment of IInd party as casual labour. He was continuously working with IInd party till 23-3-90. He was appointed against permanent vacant post of labour. That he had completed 240 days continuous service and as such entitled to be regularized. That IInd party discriminated him. Instead of regularizing, his services, he was terminated without notice. He was not paid retrenchment compensation. He was not given opportunity of hearing,. No enquiry was conducted against him. Termination of his services is in violation of Section 25 of I.D.Act. However he is not in gainful employment. On such ground, workman prays for setting aside his termination and reinstated in service.

3. IInd party filed written Statement at Page 8/1 to 8/2. IInd party has denied all material contentions of workman. IInd party submits that workman was engaged on 1-4-88 for project work with condition that his service will continue till completion of project. That in August 1989, workman was absent without intimation. He left work before completion of the project. He submitted that workman never completed 240 days during any calendar year. In 1988, workman completed 214 days, in 1989, 102 days working. Workman was not working against vacant permanent post. His services wee not terminated by IInd party. Workman himself left job in august 1989 without intimation. IInd prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Director Telecom, RE Project, Nagpur in terminating the services of Shri Deepak Kumar Dohare w.e.f. 30-8-90 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him.

REASONS

5. Though workman challenged termination of his services for violation of Section 25-F of I.D.Act claiming that he had completed 240 days continuous service. He was working in IInd party from April 1988 till 1990. Affidavit of evidence is filed but workman failed to appear for his cross-examination therefore his evidence can not be considered. Management filed affidavit of witness Shri W.N.Lanjewar covering contentions of management in Written Statement. Said witness was not made available for cross-examination. Affidavit of Shri D.S.Thakur is filed. Workman remained absent and filed to cross-examine him. Thus workman has not participated in reference proceeding. His evidence cannot be considered as he failed to appear for his cross-examination. As evidence of management's witness remained unchallenged, I find no reason to disbelieve his evidence. Thus claim of workman is not substantiated by evidence that he had completed 240 days continuous service therefore no relief can be granted in his favour. Learned counsel for IInd party R.S. Khare submitted bunch of citation as workman has not substantiated his claim, ratio held in citation needs no discussion. For above reason, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) Action of the management of Director Telecom, RE Project, Nagpur in terminating the services of Shri Deepak Kumar Dohare w.e.f. 30-8-90 is proper.

(2) Workman is not entitled to relief prayed by him.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1129.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एन टी सी लिमिटेड, कोयम्बटोरे के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 81/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-03-2014 को प्राप्त हुआ था।

[सं. एल-42011/07/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 81/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager NTC Ltd., Coimbatore and their workmen, which was received by the Central Government on 20-03-2014.

[No. L-42011/07/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 7th November, 2013

Preset K.P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No. 81/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between NTC Mill Management and their workman)

BETWEEN

1. The General Secretary : 1st Party/1st Petitioner Union
   Coimbatore District Mill
   Labour Union, Cbe-9
2. The General Secretary : 1st Party/2nd Petitioner Union
   Kovai Periyar Mavatta
   Dravida Panchalai
   Thozhilalar Munnetra
   Sangam, Cbe-45
3. The General Secretary : 1st Party/3rd Petitioner Union
   Coimbatore Regional
   Mill Labour Union,
   Cbe-35
4. The General Secretary : 1st Party/4th Petitioner Union
   National Textile Workers
   Union, Cbe-45

AND

The General Manager : 2nd Party/Respondent
NTC Ltd., Coimbatore-9

Appearance:

For the Petitioner Unions : M/s Senthilnathan, Advocate

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/07/2012-IR (DU) dated 12.10.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the NTC Mill Management, Southern Region, Coimbatore in respect of collecting union subscription for more than one union is justifiable or not? If not, what relief available to the petitioner Union/employee?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 81/2012 and issued notices to both sides. Though the Respondent has entered appearance through counsel, the First Party have failed to appear, initially. My predecessor has considered the case and has answered it against the First Party in the absence of any material. Subsequently, the case has been restored to file on application of the First Party on 19.04.2013. After this the case was being posted for filing of the Claim Statement by the First Party. In spite of repeated postings given, the First Party have failed to file their Claim Statement. Though, four unions are arrayed as First Party, none of them have come forward to put forth their claim by filing a Claim Statement. On all the occasions all of them as well as the counsel were absent.

3. In the absence of any material to justify the dispute under reference on the part of the First Party this Tribunal is not in a position to answer the reference in favour of the First Party. I find that the First Party are not entitled to any relief.

4. The reference is answered against the First Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th November, 2013)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st, 2nd, 3rd and 4th Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 20 मार्च, 2014

का.आ. 1130.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ए. के. एस. इंजीनियर्स एंड कॉन्ट्रैक्टर्स एंड अदर्स के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 128/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/240/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 128/2011) of the Central Government Industrial Tribunal/Labour Court, No. II Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Managing Director, M/s AKS Engineers & Contractors & Others and their workman, which was received by the Central Government on 20-03-2014.

[No. L-42012/240/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer.

Case No.128/2011

Registered on 28.4.2011

Sh. Bhoop Singh, S/o Sh. Prema,
Village Diargi, PO Diargi,
Tehsil Sadar, Mandi (HP). .....Applicants

Versus

1. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.

.....Respondents

APPEARANCES:

For the workman - Sh. M. S. Gorsi for the workman

For the Management - None for respondent No.1

Sh. H.R. Sharma for respondent No. 2

AWARD

Passed on-- 7.5.2013

Vide Order No.L-42012/240/2010 (IR(DU)), dated 28.3.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the aforesaid industrial disputes for adjudication to this Tribunal.

"Whether the action of the management of M/s AKS Engineers and Contractors a contractor of NTPC Koldam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Bhoop Singh S/o Sh. Prema w.e.f. 14.1.2008 for his alleged

act of habitual absenteeism is legal and justified? What relief the workman is entitled to?"

Story in the claim statement is different from the reference. The reference is about the termination of the service of the workman on a charge of habitual absenteeism while the claim statement is about retrenchment in violation of Section 25G of the Act. It has been alleged that the juniors were retained at the time of retrenchment of the workman. Violation of Section 25H has also been alleged. Dispute under reference has no mention in the claim statement. Respondent No.1 Managing Director M/s AKS Engineers (in short AKS) failed to appear despite sufficient notice hence case proceeded against him. Respondent No.2 Italian Thai Development Company (in short ITD) contested the claim to say that the claimant has made out a case for violation of provisions of retrenchment, whereas it is revealed from the record of the employer i.e. sub-Contractor respondent No.1 AKS that the workman had been removed from the service after charge-sheeting and holding a full-fledged inquiry on a charge of misconduct. Hence the claimant has no case.

Despite several opportunities given to workman he did not appear for evidence. From the claim statement itself no dispute under reference is made out hence a 'No Dispute' award is passed in the case. Reference is answered against the workman. Let two hard copies of the award and one soft copy be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर ऑर्डनेन्स फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/66/93) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-14011/19/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/66/93) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Ordnance Factory, Jabalpur and their workmen, which was received by the Central Government on 20/03/2014.

[No. L-14011/19/91-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/66/93

PRESIDING OFFICER : SHRI R.B.PATLE

The Secretary,
Council of Trade Union,
1123, Wright Town,
In front of Gate No.3,
Jabalpur .....Workman/Union

Versus

General Manager,
Ordnance Factory,
Katni, Jabalpur .....Management

AWARD

(Passed on this 18th day of February 2014)

1. As per letter dated 24-3-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/19/91-IR(DU). The dispute under reference relates to:

> "क्या आर्डनेंस फैक्ट्री, कटनी जिला जबलपुर म.प्र. के प्रबंधकों द्वारा संबंधित निम्नलिखित 14 दैनिक वेतन भोगी स्वीपरों को नियमितिकरण न करने, नियमित वेतनमान न देने एंव संराधन कार्यवाही के लंबित रहते हुये संबंधित सभी निम्न 14 श्रमिकों को 15.11.91 से सेवा से पृथक किये जाने की कार्यवाही न्यायोचित है। यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार हैं ।"

2. After receiving reference, notices were issued to the parties. Ist party workmen filed statement of claim at Page 5/1 to 5/9. Case of workmen is that workmen 1 to 14 belongs to backward community. They claims to be entitled to benefits and other emoluments and equality before law. That they were subjected to discriminative attitude. That they were employed by IInd party Ordnance Factory Katni as sweeper in factory area and colliery of Ordnance Factory. That they were in employment of IInd party from 1982 to 15-11-91. Their services were terminated without reasons. They were not paid retrenchment compensation. That termination is in violation of provisions of I.D.Act, 1947. Workman submits that by virtue of continuously working, they were entitled for regularization in service. Management adopted unfair labour practice to deprive status of regular employee and victimize them,. Workmen were not regularized in service. They were not paid wages of regular employee on principle of equal pay for equal work. Workman were initially paid wages Rs. 7.50 per day wages increased to Rs. 9.50 in 1984, Rs. 12 in 1989, Rs. 22 after 1989.

3. Workman submits that he had completed 240 days continuous service against regular vacancies. That even after working for more than 5 years, they were not regularized wages of regular employees in Pay Rs. 750-950 were not paid to them. That their services were terminated in violation of Section 33(C)(b) during pendency of conciliation proceeding referring the ratio held in various cases. Workman says that they are entitled for regularization on completing 240 days continuous service. That IInd party has violated Schedule-V, Item No.10 of I.D.Act. IInd party has engaged in unfair labour practice which reads as under- Employ worker as Badlis, casuals or temporaries and continue them as such for years with the object of depriving them of the status of privilege of permanent workman, comes under the purview of unfair labour practice. The termination of their service is illegal. On such ground, workman prays for reinstatement and regularization of their services with consequential benefits.

4. IInd party filed Written Statement at Page 7/1 to 7/3 opposing claim of workman. IInd party submits that the workman were intermittently engaged as daily rated workers as and when required when regular sweepers were absent. That services of few of them were taken on daily wage basis against the functional requirement. There is no question of terminating their services as the workman were not employed as regular employee/sweeper. It is submitted that the workman have not put up service for more than 5 years claimed by them. They are not entitled for regularization of service. Their services were engaged on daily wages. Workman were paid Rs. 25/- per day . It is denied that workmen are discriminated as they belong to SC community. All other adverse contentions of workmen are denied.

5. During pendency of reference, workman Harish Kumar died. His LRs are substituted on record.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the termination of 14 daily wage employee shown in the list instead of regularizing their services during pendency of conciliation proceeding from 15-3-91 is legal?	In Negative
(ii) If so, to what relief the workman is entitled to?"	As per final order.

REASONS

7. Workmen are challenging termination of their services for violation of provisions of I.D.Act. Identical affidavit of evidence are filed by workmen Hiralal, Ishwari Prasad, Ram Prasad, Santosh, Anthailal, Laxmibai, Vinod Ramashray, Smt.Chanshambai, Subhash Barthari, Asha Samari, widow of Harish. All of those workmen have stated in their affidavit that they were working as sweeper from 1982. Late Hiralal was also working from 1982. They were paid wages Rs. 7.50. the wages were increased time to time. Lastly Rs.22/- from 1989 onwards. That they were continuously working from 1982 to 1991. Thereafter they were engaged as contracts labour. Their services were not regularized. The contractor was nominal. The work was extracted by the management. In his cross-examination, late Heeralal denies that he was working as sweeper in Ordnance Factory Katni on daily wages. He denies that he was engaged as per exigency of work when regular employee was absent. He denies that he has not completed 240 days continuous working in any of the year. He confirms content of Para-8 of the affidavit and he and other workers were working under contractor Ramarao.

8. Shri Ishwari Prasad in his cross-examination says he was working as sweeper. He was interviewed, his name was called from Employment Exchange. He received letter of appointment, he was paid salary every month. He denies that he was working under contractor. He claims ignorance of the contents of his affidavit. Ram Prasad in his cross-examination says letter of appointment was received by him. He denies that he was working as per exigency. He denies suggestion that written appointment letter was not given to him. That he was not working under contractor. That he was discontinued from 1980. He denies that he was engaged when regular employee was absent. Shri Santosh in his cross-examination says he did not recollect whether appointment letter was given to him, pay slip was issued by management. He denied that he was working under contractor. He denies that his services were not terminated by the management. He denies that his services were discontinued after the contract period was completed. Shri Anthailal in his cross-examination says appointment letter was given to him. His services were orally discontinued. That he donot work under contractor after termination of his service. Again he says that after 2006, he did not work under any contractor. He was unable to tell whether payment was made to him by contractor of the management. That he had submitted application form. He was interviewed, then appointment letter was issued to him. Laxmi bai in her cross-examination says that he was working on daily wages, she denies that she was engaged for work as per exigencies when regular sweeper was absent. She denies that she was working under contractor. Some suggestions are denied by Vinod, Subhash & Asha Samari.

9. Management filed affidavit of evidence of Niranjan Lal. Management's witness says workmen were not employed as regular worker sweeper since 1982. That they were engaged on daily rated basis as per requirement. There is no question of terminating their services. That the workman did not put in more than 5 years regular

service claimed by them. That Section 25-F of I.D.Act is not attracted as workman did not work more than 240 days continuous service. That they are not entitled for regularization. The termination of their service did not work more than 240 days continuous service. That they are not entitled for regularization. The termination of their service is in violation of Section 33(2)(b) , 3(b) is denied. Management's witness in his cross-examination says that he joined Ordnance Factory as Dy.General Manager on 19-4-2010 presently he is working as Joint General Manager. That regular sweeper are working in the factory. Their designation is changed as MTS. He denied that workmen was appointed on pay scale basis. He denies that employees were working from 1982 as regular sweepers. Management's witness admits that workmen were not paid retrenchment compensation. However he adds that they were not employees of IInd party. The management's witness has not produced any document that all those employees were working as employees of the contractor. The documents relating to the agreement between contractor and management is not produced. Whether the contractors were holding licence, whether the establishment of IInd party is registered under CL(R&A)Act, 1970. There is absolutely no pleadings or evidence. The written notes submitted by counsel for workman is consistent with their pleadings. In cross-examination of workman, there was no denial that the employees were not working with the IInd party as sweeper, rather it is defence of IInd party that they were employed as temporary employee as per need of the work. The evidence of all the workmen that they were working with IInd party from 1982 to 1991 is not shattered. I donot find reason to disbelieve their evidence. Their services are discontinued without notice, no retrenchment compensation is paid to them. The evidence of the workman that they were engaged after interview submitting applications is not supported by the documents. Thus recruitment process was not followed. The termination of their service is in violation of section 25-F of I.D. Act. therefore I record my finding on Point No.1 in Negative.

10. **Point No.2-** in view of my finding on Point No.1, the termination of service of workman is in violation of Section 25-F of I.D.Act, question arises whether they are entitled for reinstatement with back wages. The evidence of the employees/ workmen is not supported by document that recruitment process was followed. Workmen were engaged on daily wages from 1982 to 1991. Considering their appointment was not made after following recruitment process, they were not appointed against any vacant post therefore the relevant would not be justified. Considering the length of service put by those workmen, the reasonable compensation would be appropriate. Reasonable compensation Rs. 1 Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

11. In the result, award is passed as under:-

(1) Action of the IInd party management terminating services of 14 employees in the list is illegal.

(2) IInd party is directed to pay compensation Rs. One Lakh to those 14 employees shown in the list.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट रेल डाक सेवा, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/60/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-40012/239/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/60/03) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent Rail Dak Seva, Jabalpur and their workman, which was received by the Central Government on 20/03/2014.

[No. L-40012/239/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/60/2003

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Vinod Kumar Garg 74 others,
EWS/82, Dhanvantri Nagar,
Jabalpur. .....Workmen

Versus

The Superintendent,
Rail Dak Seva,
Jabalpur Mandal,
Jabalpur .....Management

AWARD

Passed on this 26th day of February 2014

1. As per letter dated 25-3-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/239/2002-IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Suptd. of Rail Dak Seva, Jabalpur Division, Jabalpur in not regularizing the services of part time casual labour working continuously as Class IV employees with all consequential benefits is legal and justified? If not, to what relief the concerned workmen are entitled?"

2. After receiving reference, notices are issued to the parties. Ist party workman submitted statement of claim at Page 6/1 to 6/3. Ist party workman submits that they were appointed in 1986. The details shown in Para-1 of the statement of claim. They were working as waterman/ Farrash in establishment of IInd party. That Competent Authority issued circular dated 16-9-92, 28-4-97. That CAT Hyderabad has referred judgment holding that part time casual labour worker who rendered service more than a decade are fully entitled for declaring their status as temporary Group D staff. The copy of judgment and circulars are produced. That they are working for more than 15 years on part time basis. They press for temporary status of Group D employee.

3. IInd party filed Written Statement at Page 9/1 to 9/3. The engagement of Ist party workman as part time waterman/Farrash is not denied. However it is submitted that workmen are not entitled to temporary status of Group D staff. Ministry issued communication dated 17-5-89 specifying purpose of recruitment in Group D post. Casual labour stands at Sl. No.1 in priority subject to the vacancies. That regularization of Ist party workman in Group D post is not feasible. Quantum of work in RMS is decreasing day by day and accordingly there is curtailment of staff. At present the work is maintained within the available staff. On such ground, IInd party denies claim of the Ist party workman.

4. Ist party submitted rejoinder at 10/1 to 10/2 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Suptd. of Rail Dak Seva, Jabalpur Division, Jabalpur in not regularizing the services of part time casual labour working continuously as Class IV employees with all consequential benefits is legal ?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Relief prayed by workmen are rejected.

REASONS

6. Though workmen are claiming temporary status as Group D staff, their engagement as part time employee since more than 15 years is not disputed. All the workmen filed affidavit of their evidence. However they failed to make available for their cross-examination. As per ordersheet dated 4-10-10, their evidence was closed with observation that their evidence shall not be looked into. As such there is no evidence in support of claim by workman. IInd party has not participated in the reference proceeding, no evidence is adduced therefore I record my finding on Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Suptd. of Rail Dak Seva, Jabalpur Division, Jabalpur in not regularizing the services of part time casual labour working continuously as Class IV employees with all consequential benefits is legal.

(2) Workmen are not entitled to relief as prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1133.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर सिक्यूरिटी पेपर मिल, होशंगाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/91/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42011/42/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/91/99) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Security Paper Mill, Hoshangabad and their workmen, which was received by the Central Government on 20/03/2014.

[No. L-42011/42/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/91/99

PRESIDING OFFICER : SHRI R.B. PATLE

General Secretary,
SPM Karamchari Union,
Hoshangabad .....Workman/Union

Versus

General Manager,
Security Paper Mill,
Hoshangabad .....Management

AWARD

(Passed on this 3rd day of March, 2014)

1. As per letter dated 16-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42011/42/98/IR(DU). The dispute under reference relates to:

> " Whether the action of the management of General Manager, Security Paper Mill in not regularizing the Group "C" and Group "D" employees as per recommendations of NPC Report is legal and justified? If not, to what relief the workmen are entitled for?"

2. After receiving reference, notices were issued to the parties. Union failed to submit Statement of claim. Ist party is proceeded exparte on 29-9-09. IInd party management filed exparte Written Statement on 9-7-2011. IInd party submits that workman was holding civil post. Dispute is not tenable under I.D.Act. The Tribunal lacks jurisdiction to decide the reference. In Original Application No. 1148/96 and 550/97, CAT Bombay bench held that industrial law is not applicable to persons holding civil post.

3. IInd party further submits that recommendations of National Pay Commission were accepted by Govt. The Pay Commission was implemented from 21-10-92 entering tripartite settlement. The NPC recommended creation of new post and upgradation of existing post in all cadres i.e. Group A, B, C & D and unclassified industrial and re-designation of almost all posts. However the fact is that the NPC did not make any recommendations that Group C, D employees or for that matter any categories of employees should be regularized from 21-10-92. That 21-10-92 was agreed in the settlement for implementation of the report and appointed against upgraded post were regularized from said date. The employees promoted against newly created post on adhoc basis were regularized convening DPC after recruitment rules in respect of those post were published. Soon after implementation of NPC report many employees were given adhoc promotion giving relaxation in qualifying service. IInd party submits that recruitment rules were in draft stage and many of the employees in the feeder posts had not put in the requisite years of qualifying service. On such ground, IInd party prays for rejection of the demand of Union for regularization of Group C & D employees w.e.f. 21-10-92.

4. Considering pleadings, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of General Manager, Security Paper Mill in not regularizing the Group "C" and Group "D" employees as per recommendations of NPC Report is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to relief claimed by Union.

REASONS

5. Union has not participated in the reference proceeding. Statement of claim is not filed. Claim for regularization of Group C, D employees on 21-10-92 is opposed by the management filing Written Statement. Union not adduced any evidence. Management witness Shri K.N. Mahapatra supported most of the contentions in Written Statement in Affirmative of his evidence. Management's witness is not cross-examined. There is no reason to disbelieve evidence of management's witness. For absence of evidence by Ist party Union, I record my finding on Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The Whether the action of the management of General Manager, Security Paper Mill in not regularizing the Group "C" and Group "D" employees as per recommendations of NPC Report is legal and proper.

(2) Workmen are not entitled to relief prayed by Union.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1134.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हैड इंडियन एग्रीकल्चरल रिसर्च इंस्टिट्यूट रीजनल वीट रिसर्च स्टेशन, इंदौर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/91/94) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42012/15/93-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/LC/R/91/94) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Head, Indian Agricultural Research Institute, Regional Wheat Research Station, Indore and their workman, which was received by the Central Government on 20/03/2014.

[No. L-42012/15/93-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/91/94

PRESIDING OFFICER : SHRI R.B. PATLE

Smt. Meera Bai,
W/o Shri Ram Kishan,
Gaon Pipalyahana,
Indore .....Workman

Versus

The Head,
Indian Agricultural Research Institute,
Regional Wheat Research Station,
Indore .....Management

AWARD

(Passed on this 28th day of February 2014)

1. As per letter dated 13-7-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/15/93-IR(DU). The dispute under reference relates to:

" Whether the action of the management of Head, Indian Agricultural Research Institute, Regional Wheat Research Station, Indore in terminating the services of Smt. Mira Bai is legal and justified? If not, what relief she is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party filed Statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that she was working as permanent labour from 1987 in establishment of IInd party. She was paid salary in pay scale Rs. 750-940 per month. Her services were discontinued/ terminated in 1992. She submits that her services were terminated without issuing chargesheet or conducting enquiry. She was called for interview for permanent post in 1988, 1990, 1992. She was not paid retrenchment compensation. Her services are terminated to cause harassment. Other casual labours were called for interview were regularized even after they had crossed the prescribed age limit. That in October 1996, Hon'ble Agriculture Minister had assured regularization of daily wage labours. Despite she had continued more than 240 days working, her services are terminated illegally. She prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 6/1 to 6/3. IInd party denied that workman was engaged in 1977. It is denied that she was working as permanent labour. As IInd party workman was first engaged in 1981 as seasonal labour. She worked for 53 days in 1981. The wages were paid as per the notification under Minimum Wages Act. It is denied that workman was continuously working till 1992. That muster roll of seasonal labours is not maintained. It is denied that IInd party was engaging about 50 labours. As per IInd party it was engaging 15-20 labours in sowing season. That workman is not covered under Section 25 B of I.D.Act. She has not worked for more than 240 days continuously during any of the year. IInd party further submits that it is not covered as Industry under I.D.Act. That IInd party is involved in Research and not carrying for profit motive. That IInd party is a sub station of ICER society registered under Societies Registration Act, 1860. The allegation of workman are denied that unsuitable persons were regularized and her services are terminated to calls made to her. Workman is not entitled for absorption. She is not entitled for any of the relief prayed. On such ground, IInd party claims for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Head, Indian Agricultural Research Institute, Regional Wheat Research Station, Indore in	In Affirmative

terminating the services of Smt. Mira Bai is legal and justified?

(ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

REASONS

5. Workman filed her affidavit of evidence stating that she was working at Regional Research Centre, Indore. In 1992, she alongwith Keram Singh, Reham Singh, Mangu Singh, Tarachand, Shantibai, Tejubai were called for interview for absorption as permanent labour. That the labours without experience are regularized. Despite of her experience, she was not regularized. In her cross-examination, workman says that she was not at work for 1-2 months in a year. She was working rest of the year. She says she was engaged during sowing season for 2 months and harvesting season for 3 months. That she had failed in the interview. That IInd party was taking soyabeen and wheat crops. The evidence of workman is not cogent that she was continuously working and completed 240 days continuous service in particular year. The evidence of management's witness A.N.Rurali is on the line that seasonal labours were engaged for sowing and harvesting season. Workman was not continuously engaged. The personal files of the seasonal labours were not maintained. Payment was made as per muster roll. As sanctioned post are not available, workman cannot be regularized. In his cross-examnation, management's witness says workman was not working throughout the year. Labours were engaged for seasonal work. The experienced labours were regularized. The witness denied that workman had completed more than 240 days continuous working. The evidence discussed above is not sufficient to establish that workman had completed 240 days continuous service during any of the year. As such workman is not covered as workman under Section 25-B of I.D.Act.

6. Learned counsel for IInd party has submitted bunch of citations in which evidence adduced by workman is not sufficient to prove that she was continuously working for 240 days during any of the year as such workman is not entitled to protection of Section 25-F of I.D.Act. The detailed discussions of ratio held in the citations is not necessary. For the reasons discussed above, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Head, Indian Agricultural Research Institute, Regional Wheat Research Station, Indore in terminating the services of Smt. Mira Bai is proper.

(2) Workman is not entitled to relief prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1135.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजनल इंजीनियर टेलिकॉम प्रोजेक्ट, ग्वालियर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/230/93) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-40012/118/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/230/93) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Divisional Engineer, Telecom Project, Gwalior and their workman, which was received by the Central Government on 20/03/2014.

[No. L-40012/118/91-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/230/93

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Chhote Khan,
S/o Shri Habi Khan,
Village Germi,
Distt. Bhind (MP) .....Workman

Versus

Divisional Engineer,
Telecommunication Deptt.,
Gwalior (MP) .....Management

AWARD

(Passed on this 9th day of October 2013)

1. As per letter dated 20-22/10/93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/118/91-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Divisional Engineer Telecommunication Gwalior in terminating the services of Shri Chhote Khan without any charges and without retrenchment compensation is justified or not? If not, for what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed his statement of claim at Page 3/1 to 3/3. Case of workman is that he was engaged on daily wages by IInd party from 1-10-85. Since then he was continuously working with IInd party with devotion. His services were discontinued from 1-8-87. His services were orally terminated without issuing notice , pay in lieu of notice was not paid to him, he was not paid retrenchment compensation. He had completed 240 days continuous service prior to termination of his services. IInd party has violated provisions of Section 25-F, H & N of I.D.Act. On such grounds, IInd party prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 8/1 to 8/2. IInd party submits that Divisional Engineer, Telecom Gwalior is impleaded as party. That the workman was working under Junior Telecom Officer, Gwalior who was under control of the Divisional Engineer, Telecom Bhopal. That workman was engaged as casual labour for specific period in coaxial cable project, Gwalior. Workman was engaged purely on temporary basis for specific work. He was not appointed against any vacant post. There was no need to give him notice. Workman is not covered under I.D.Act. His services automatically came to end on 1-8-87 when he remained absent without prior intimation. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Engineer Telecommunication Gwalior in terminating the services of Shri Chhote Khan without any charges and without retrenchment compensation is legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Relief claimed by workman is rejected.

REASONS

5. Though workman is challenging termination of his services alleging violation of Section 25-F, H & N of I.D.Act filing his statement of claim, however he did not participate in further proceedings of the reference, he has not adduced any evidence in support of his claim. His evidence was closed on 23-7-09. Management filed affidavit of evidence of witness Shri S.N.Tiwari. Witness of the management has stated that workman was engaged as casual labour for specific work. His services automatically came to end on 1-8-87 as he remained absent without intimation. The evidence of management's witness remained unchallenged. Workman failed to adduce evidence in support of his claim therefore the action of the management cannot be said illegal. For above reasons, I record my finding on Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) Action of the management of Divisional Engineer Telecommunication Gwalior in terminating the services of Shri Chhote Khan is proper.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 मार्च, 2014

का.आ. 1136.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेनेजर वाल्वस प्रोडक्शन भारत हैवी इलेक्ट्रिकल्स लिमिटेड, त्रिची के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 11/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/03/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th March, 2014

S.O. 1136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 11/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Manager (Valves Production), Bharat Heavy Electricals Ltd., Trichy and their workman, which was received by the Central Government on 20/03/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 16th December, 2013

Present : K. P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 11/2013

[In the matter of the dispute for adjudication under clause 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010) between the Management of Bharat Heavy Electricals Ltd. and their workman]

BETWEEN

Sri K. Sivasubramaniyan : 1st Party/Petitioner

AND

The Manager : 2nd Party/Respondent
(Valves Production)
Bharat Heavy Electricals Ltd.
Building No. 5
Trichy-14

APPEARANCE:

For the 1st Party/ Petitioner : M/s S. Muthukrishnan, Advocate

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

This is an Industrial Dispute taken on file under 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

1. The averments in the Claim Statement filed by the petitioner in brief is this :

The Respondent Company had appointed the petitioner as Artisan, by order dated 10.02.2009. while he was working with the Respondent, the Respondent had issued a Charge Sheet dated 30.01.2010 to the petitioner alleging that Experience Certificate produced by him is not genuine and he has committed the misconduct of giving false information regarding his previous experience for securing employment. Not satisfied with the explanation submitted by the petitioner, the Respondent conducted domestic enquiry against the petitioner. In the enquiry the charge was found proved and the petitioner was imposed the punishment of removal from service with effect from 18.10.2010. The appeal filed by the petitioner against this order was dismissed. The removal of the petitioner from service is arbitrary and unreasonable. The petitioner had not furnished any false information. The certificate submitted by him is genuine. The petitioner is entitled to be reinstated in service with continuity of service, back wages, etc.

2. Respondent has filed Counter Statement contending as follows:

In 2008, the petitioner had applied for the post of Artisan (temporary) in response to the employment notice of the Respondent. The stipulated maximum age for applying for the post was 30 years. The petitioner was aged 31 years, 7 months and 15 days as on the cut-off date. In his application he has shown work experience of 3 years with M/s Metcon Enterprises, Trichy to claim relaxation of age. The petitioner had passed the test and also the interview. After submitting his documents, the petitioner had joined duty on 10.02.2009. When a reference was made to M/s Metcon Enterprises who had issued experience certificate to the petitioner for confirmation, a reply was received stating that the petitioner worked in the said firm as Fitter through Contractor. The contents of the letter raised doubt about its genuineness and on further verification, a Partner of M/s Metcon Enterprises stated that the letter was not issued by the firm and that the signatory was not authorized to sign on behalf of the firm as on the date of issuance of the letter. Working with a Contractor could not be considered as experience in M/s Metcon Enterprises. Thus, the experience claimed by the petitioner had turned out to be not genuine. A charge sheet was issued to the petitioner for the misconduct of false information regarding his previous experience. The petitioner was not able to prove genuineness of the certificate in the enquiry proceedings. The petitioner was found guilty of the charges and the punishment of removal from service was imposed on him. In 2011, the Respondent had released another employment notice for the post of Artisan-IV (Temporary) and the petitioner had also applied for this post. He had secured good marks in the test and had become eligible to be considered for interview. His application for the post showed that he had claimed experience of 20 months with the Respondent Company. On verifying his file it was revealed that he was earlier removed from the service of the Management. So he was not called for interview. By responding to the notification of vacancies in 2011, the petitioner is to be deemed to have acquiesced to his earlier termination so it is not permissible for him to raise the industrial dispute. The petitioner is not entitled to any relief.

3. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Exs.W1 to Ex.W4 and Exs.M1 to Ex.M27.

4. **The points for consideration are :**

(i) Whether the termination of the petitioner from service of the Respondent on 18.10.2010 is legal and justified?

(ii) Whether the petitioner is entitled to reinstatement in service. If not, what if any, is the relief to which he is entitled?"

The Points

5. The petitioner had applied for temporary post as Artisan in the Respondent Company in the year 2008. The maximum age limit for the post was 30 years. However, an applicant was entitled to relaxation in age limit provided

he has necessary experience. The petitioner who was over aged by 1 year, 7 months and 15 days on the cut-off date of the application had given his application alongwith two experience certificates from two different establishments including that of one M/s Metcon Enterprises. The petitioner became successful in the test conducted for the post, was interviewed and was appointed and had joined duty on 10.02.2009. The respondent subsequently noticed that the experience certificate issued by M/s Metcon Enterprises is not a genuine one, that the petitioner had furnished false information and initiated disciplinary proceedings against him. On the basis of the finding in the enquiry that the certificate is not genuine, the petitioner was terminated from service.

6. The only question that requires consideration is whether the petitioner has furnished any false information to the Management while applying for the post of Artisan, so as to get age relaxation. Ex.M3 is the copy of the application given by the petitioner to the Respondent. In Column No. 14 of the same regarding relaxation of age, he has stated that he has experience in M/s. Metcon Enterprises, Trichy from March 2005 to March 2008. The experience certificate issued by M/s. Metcon Enterprises is seen at Page-29 of the typed set of the documents of the Respondent and is marked alongwith joining report of the petitioner as Ex.M6. This certificate states that the petitioner has been working as Fitter under the Contractor of the Company from March 2005 to March 2008 and has worked in fabrication of boiler components for BHEL, Trichy. Ex.M8 is the letter written by the Respondent to the Managing Director of M/s Metcon Enterprises to confirm the experience claimed in the said Company by the petitioner. The petitioner had joined the Respondent Company even prior to this. Ex.M9 is said to be the letter written by the authorized signatory of Metcon Enterprises stating that the petitioner has worked in the establishment as Fitter under its Contractor from March 2005 to March 2008 and that the certificate is in order. The letter is seen signed by one Govindarajulu. Thus, by Ex.M9 there is a confirmation of the experience certificate earlier issued, that also by the authorized signatory. One does not know what prompted the Respondent to make a further verification regarding the genuineness of the confirmation letter. What is stated in the Counter Statement is that the statement in the letter that "*the petitioner worked in the said firm as Fitter through their Contractor*" raised doubt about the genuineness and further verification was made with Metcon Enterprises and the partner of Metcon Enterprises, Karuppuswamy confirmed that the letter dated 12.06.2009 i.e. Ex.M9 was not issued by the firm and the signatory was not authorized to sign on behalf of the firm as on the date of issuance of the letter. It is pertinent to note that even in the experience certificate dated 28.03.2008 submitted by the petitioner what is stated is that the petitioner has worked under the Contractor of Metcon Enterprises and not under the Enterprises directly. Thus, it could be seen that the petitioner has not attempted to conceal anything in his experience certificate, or rather the experience certificate issued by Metcon Enterprises was not a false one. Though, Ex.M9 and also the experience certificate dated 28.03.2008 are by the authorized signatories, the signatures are by two different persons, yet there is no case for the Respondent that the person who signed the experience certificate dated 28.03.2008 is not has no authority to sign it and that it is not a genuine one. The case is that the signatory in Ex.M9 was not authorized to sign for Metcon Enterprises on the day on which it was issued. As pointed out by the counsel for the petitioner, the interesting part is that below the typed contents of Ex.M9 there is a handwritten endorsement that the letter was not issued by the Company and that Govindarajulu who signed the letter on behalf of the Company was not in the rolls of the Company as on 12.06.2009. There is only the statement in the Counter Statement that this is written by Karuppuswamy, a partner of Metcon Enterprises. It was for the Respondent who has claimed in the enquiry proceedings that the signatory to Ex.M9 has no authority to do so, to prove the same. But no such proof is seen given in the enquiry proceedings.

7. On going through the documents produced by the Respondent themselves, it could be seen that the petitioner had not concealed any information or had given any false information or had made any attempt of fraud. Even in his application, he did not claim that he worked with Metcon Enterprises directly. It is clear from the experience certificate given that he worked under the Contractor of Metcon Enterprises which was doing the work of boiler components of BHEL. The demand of the Respondent at the time of application was that the applicant should have previous experience for age relaxation. That the petitioner has worked for Metcon Enterprises through a Contractor and has gained experience of the work should not be a disqualification and could not have been disregarded for the purpose of relaxation of age. Again, it could be seen that Govindarajaulu who issued Ex.M9 was a partner of Metcon Enterprises on the day on which it was issued. Ex.W4 is the information supplied to the petitioner by the Respondent itself on application under the Right to Information Act. This gives the names of Partners of M/s Metcon Enterprises from 01.01.2004 to 31.03.2010. This shows that Govindarajulu was a partner of Metcon Enterprises as on the date when Ex.M9 was issued. The case of the Respondent that the petitioner has furnished false information seems to be only imaginary. There is no case for the Respondent that the petitioner did not work with the Contractor of M/s Metcon Enterprises at all. So it is to be assumed that the case of the petitioner that he worked for Metcon Enterprises under its Contractor is not in dispute at all. So there is no question of the petitioner lacking in experience for getting age

relaxation. The Enquiry Officer has given a finding based on wrong analysis of facts. When Govindarajulu was a partner of Metcon Enterprises even in July 2010, there was no basis for the Enquiry Officer to state that the letter showing the names of partners will not indicate the date upto which Govindarajulu was a partner in the firm in the year 2009. The petitioner who had obtained a job by his severe effort with the Respondent was wrongly and unjustly removed from service by the Respondent.

8. To crown the above, the Respondent has been cruel enough not to call the petitioner for interview on a subsequent application even though he has qualified the written test with good marks. What is stated in the Counter Statement is that even though removal of the petitioner from the service of the Respondent previously was not a disqualification for applying for job again, he was not called for interview because of his previous removal from service. The case of the Respondent that a second application by the petitioner for a place in the Respondent Company will amount to acquiescence of his previous removal from service certainly could not be accepted. He has challenged the order within time and therefore will be entitled to relief if his case is genuine.

9. In view of my discussion above, the petitioner is entitled to the relief of reinstatement in the service of the Respondent. Considering the circumstances, I am inclined to grant him 50% of back wages also with continuity of service.

Accordingly, the Respondent is directed to reinstate the petitioner in service with 50% back wages within one month. The petitioner will be entitled to continuity of service and other attendant benefits also.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th December, 2013)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri K. Sivasubramaniyan

For the 2nd Party/ Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	18.10.2010	Charge Sheet
Ex.W2	01.11.2010	Penalty Advice
Ex.W3	07.11.2012	Certificate to be issued by the Conciliation Officer as provided u/s 2A of the ID Act, 1947
Ex.W4	29.07.2010	Information under RTI Act, 2005

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	BHEL recruitment policy (extract from Personnel Manual)
Ex.M2	-	Employment notice (No. 283) for ARTISANS (Petitioner got the job, in response to this notice)
Ex.M3	23.10.2008	Application of the petitioner dated 23.10.2008
Ex.M4	25.01.2009	Permission slip for written test to be conducted on 25.01.2009 (a declaration from the candidate is included in this slip)
Ex.M5	03.02.2009	Offer of appointment dated 03.02.2009
Ex.M6	10.02.2009	Joining report dated 10.02.2009 alongwith documents vis. (a) Attestation form (4 pages), (b) Experience Certificates from Stahllform Technik Pvt. Ltd. and M/s Metcon Enterprises (c) OBC Certificates
Ex.M7	17.02.2009	Office Order – Joining the Company dated 17.02.2009
Ex.M8	22.05.2009	Letters (2 Nos.) dated 22.05.2009 sent by BHEL to the respective organizations to confirm genuineness of the experience certificate
Ex.M9	12.06.2009	Reply sent by M/s Metcon Enterprises dated 12.06.2009 (Endorsement made by partner on a later date denying issuance of such a letter also seen in the bottom end of the letter)
Ex.M10	30.01.2010	Charge Sheet
Ex.M11	16.02.2010	Reply dated 16.02.2010 (reply to charge sheet)
Ex.M12	04.03.2010	Notice of enquiry dated 04.03.2010 (sitting on 10.03.2010)
Ex.M13	10.03.2010	Minutes of enquiry proceedings conducted on 10.03.2010
Ex.M14	15.04.2010	Minutes of enquiry proceedings conducted on 15.04.2010
Ex.M15	-	Enquiry findings alongwith letter dated 15.07.2010 (show cause notice) inviting views of the petitioner to the findings
Ex.M16	20.08.2010	Reply to the findings
Ex.M17	18.10.2010	Penalty advice dated 18.10.2010 – Removal from Service
Ex.M18	28.10.2010	Appeal against the penalty

Ex.M19	01.11.2010	Rejection letter dated 01.11.2010 and confirming the punishment
Ex.M20	04.11.2010	Office Order – Name deleted from Roll list
Ex.M21	17.05.2012	Petition under S.2A before ALC (Central)
Ex.M22	-	Reply submitted to ALC © by BHEL
Ex.M23	-	Employment notice no. 290
Ex.M24	30.05.2011	Application dated 30.05.2011 made by the petitioner alongwith (a) Experience Certificates – 3 Nos. inclusive of BHEL
Ex.M25	24.08.2011	Order dated 24.08.2011 in WP (MD). 9565/2011
Ex.M26	-	Standing Orders of BHEL

नई दिल्ली, 24 मार्च, 2014

का.आ. 1137.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेयरमैन रेजिमेंटल एसोसिएशन ह क्यू 1, ई एम ई सेंटर, सिकन्दराबाद के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 12/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/03/2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 12/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chairman, regimental Association, HQ 1, EME Centre, Secunderabad and their workmen, which was received by the Central Government on 24/03/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI,
Presiding Officer

(Dated the 13th day of February, 2014)

INDUSTRIAL DISPUTE L.C. No. 12/2011

Between:

Sri S.C. Roy,
S/o Late Satish Chander Roy,
R/o 24-641,
Maruthinagar, Road No.4,
Trimulgherry, Secunderabad-15. .....Petitioner

AND

1. The Chairman,
Regimental Association, HQ 1,
EME Centre, Secunderabad-10.

2. The Commandant,
Military College of EME,
Secunderabad,

3. Lt.Col, O/o EME Archives &Museum
(EME A & M)
C/o Military College of Electronics and
Mechanical Engineering
Pin.900543.
C/o 56 APO ....Respondents

Appearances :

For the Petitioner : M/s. R. Yogender Singh, C.V.N. Rama Krishna & S. Maheshwarudu, Advocates

For the Respondent : Sri G. Jaya Prakash Babu, Advocate

AWARD

Sri S.C. Roy, the Petitioner has filed this petition invoking Sec.2A(2) of Industrial Disputes Act, 1947 seeking for setting aside the termination order dated 1q6.9.2010 issued by the third Respondent declaring it as void, illegal and to reinstate the Petitioner into the services of the Respondent with back wages and all other consequential benefits.

2. **The averments made in the petition in brief are as follows**:

Petitioner was appointed as Technical Supervisor at EME Archives & Museum w.e.f. 3.10.1990, which involves with maintenance of Museum located in the premises of Military College of EME, Secunderabad. He was appointed through association which is registered under Societies Act, and which is under the control of the 1st Respondent, which in its turn being maintained with the Central Government funds, through which Petitioner was receiving the consolidated pay of Rs.5500 per month. Respondents are paying the salaries of the employees of association which is also controlling the affairs of Museum. Being an association, Respondent organization is squarely covered under Industrial Disputes Act, 1947. 2nd Respondent is the controlling authority of the affairs of the 3rd Respondent. 3rd Respondent is the delegated authority of 1st Respondent who terminated the services of the Petitioner vide orders dted 16.9.2010 without assigning

any reason. Petitioner served the said organization very devotedly and his services were appreciated by each and every authority of the Respondent organization. During the month of August, 2010 Petitioner fell sick due to kidney problem for which he has under gone treatment in care hospital, Banjara Hills, Hyderabad to the knowledge of the Respondents. Surprisingly, while he was unable to attend to his duties, he received a letter on 16.9.2010, wherein, the 3rd Respondent terminated his services without any reason which is in total violation of law and principles of natural justice . Legal notice was issued by the Petitioner to the Respondents and it was duly acknowledged by 3rd Respondent during the month of October, 2010 but they have not responded. Another legal notice dated 8.12.2010 also was issued to the Respondents but without any response. The action of the Respondents in terminating the services of the Petitioner after extracting his services for 211 years and without following the provisions of Industrial Disputes Act, 1947 is not correct. Hence, the petition.

3. Counter in the form of affidavit is filed by Col. Shaji M. Varghese, MCEME on behalf of Respondents No.1,2 and 3 with the averments in brief as follows:

Petitioner was appointed by MCEME as Technical Supervisor to look after EME , Archives & Museum and his salary was given from Regimental Association as Archives & Museum is a Regimental Institute of Corps of EME. No Central Government funds are provided to Regimental Association and thus it does not come under Industrial Disputes Act, 1947. In a capacity of administrator appointed by 2nd Respondent. Third Respondent has authority to issue the termination bringing it to the knowledge of 1st and 2nd Respondents. Petitioner never informed the organization about his sickness and he absented himself on many occasions without informing and causing inconvenience. Petitioner was requested to offer his resignation in view of advancing age of 66 years and medical condition which was not disclosed to organization. Prolonged absence was affecting the Central Institute of Corps. Notice dated 8.12.2010 was replied by Sri D. P. Ghadge, Lieutenant Colonel, Officer-in-charge, Archives and Museum though their counsel, Sri G. Jaya Prakash Babu, Sr. Central Government Standing Counsel on 15.1.2011. Petitioner's appointment was temporary and it does not come under the Industrial Disputes Act, 1947. No Central Government funds are spent for paying salary to the Petitioner. This Tribunal has no jurisdiction to entertain his claim. Petitioner was a Sub-Major and retired from service on attaining the age of superannuation and he was appointed by the Respondents purely on temporary basis. His services were used depending on the exigencies of the Respondents. In view of advancement of age and his frequent absence to duty was hampering the maintenance and other works of the Respondent Department which is an association, his services were terminated. The same is valid. Industrial Disputes Act, 1947 does not apply to this case. Petition is liable to be dismissed.

4. To substantiate his contentions, Petitioner/workman has examined himself as WW1 and got marked Ex.W1 to W6. on behalf of the Respondent management MW1 was examined and Ex.M1 and M2 were marked.

5. Heard the arguments of either party.

6. The points that arise for determination are:

I. Whether this Tribunal got jurisdiction to entertain this case?

II. Whether the impugned termination order is liable to be set aside? If so, on what grounds?

III. To what relief the Petitioner is entitled to?

7. Point No. I :

It is the contention of the Petitioner that being an association, the Respondent organization squarely covered under Industrial Disputes Act, 1947. Where as it is the contention of the Respondents that EME Archives and Museum in which the Petitioner has been engaged as Technical Supervisor is maintained by Regimental Association, as the said Archives and Museum is a regimental institute of Corps of EME and further no Central Government funds are provided to Regimental Association and thus, it does not come under Industrial Disputes Act, 1947.

8. There is no evidence made available on record to show that any central government funds are provided to Regimental Association. Ex.W6 is the letter which, according to the Petitioner, shows that there are grants from the central government. But a perusal of the said letter does not give raise to the understanding that any central government funds were allocated to the Respondent organization.

9. It is the specific contention of the Respondents that Respondent does not come under the definition of 'Industry' as defined in Sec. 2(j) of Industrial Disputes Act, 1947 and Petitioner does not come under the definition of workman as defined in Sec.2(s) of the Industrial Disputes Act, 1947 and therefore, there is no industrial dispute to be taken cognizance off by this forum.

10. Now it is to be verified whether Respondent organization is an industry and whether Petitioner is a workman. Sec.2(j) of Industrial Disputes Act, 1947 defines the 'Industry" as follows:

> "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen"

Whereas the Respondent organization is Archives and Museum. It is neither doing any business nor doing any trade and it is not an undertaking and it is not manufacturing any goods or services. It is an archaeological museum which is meant for preservation of the important documents and objects to the benefit of society. There will be neither profit nor any earning in it. By any stretch of imagination the said organization can be brought into the purview of the definition of 'Industry' as provided in Sec.2(j) of Industrial Disputes Act, 1947. The contention of the Petitioner that since being an Association, Respondent organization is squarely comes under the Industrial Disputes Act, 1947 is not at all a proper and acceptable. Just because Respondent organization is an association it will not attract any of the ingredients of Sec.2(j) of Industrial Disputes Act, 1947. Thus, the Respondent organization i.e., EME Archives and Museum in which Petitioner worked as technical supervisor is not an 'Industry'.

11. Petitioner has been engaged as Technical Supervisor to look after EME Archives and Museum by MCEME, after his retirement from services as Sub-Major, Military College of EME. He was being paid salary of Rs.5500/- per month. At no point of time he has drawn salary of less than Rs.1600/- per month, as can be seen from the material on record. It can be said so since at the time of his appointment his salary was Rs.3000/- per month as per his own evidence as WW1. It was raised from time to time and his last drawn pay was Rs.5500/- per month. His designation itself indicates that he was employed in a supervisory capacity. Ex.M2 indicates the various duties which were entrusted to the Petitioner as Technical Supervisor of EME Archives and Museum. A perusal of the said duties clearly show that he was holding a very responsible job and he was practically incharge of the Museum. Thus, it can not be said that he has been a workman and he will come under the purview of the definition of workman as indicated in Sec.2(s) of the Industrial Disputes Act, 1947.

12. Even otherwise as already discussed above, Respondent organization is not an 'Industry' and thus, Petitioner can not be treated as workman and for this reason also the dispute between the Petitioner and Respondents can not be termed as an industrial dispute.

In view of the fore gone discussion it is held that, this court can not decide the present dispute which is not an industrial dispute.

This point is answered accordingly.

13. Point No. II :

To arrive at comprehensive disposal of this case this point is also to be taken up, irrespective of the finding given in Point No.I.

14. No doubt, the impugned order i.e., Ex.W1 is not containing any reasons for termination of the Petitioner from service. It is the contention of the Petitioner that while he was attending to service regularly, surprisingly and suddenly his services were terminated by virtue of Ex.W1 order. Whereas it is the contention of the Respondents that Petitioner has been absenting himself from duties frequently due to his advanced age and also illness and that he did not inform of his sickness to the Respondent and never sought for any leave but absented himself that result is to substantial inconvenience to the Respondent organization and that after orally requiring the Petitioner to offer resignation and since he failed to offer any such resignation, his services were terminated by virtue of Ex.W1 order. But as already discussed above, Ex.W1 contains none of these reasons.

15. The record indicates that Petitioner suffered serious ailments like Kidney problem and was admitted in Care Hospital for treatment in August, 2010. But he failed to disclose the said fact to the Respondents and did not obtain any leave, as can be seen from the material on record. He admitted that he has not taken any leave during his service as Technical Supervisor. But he was hospitalized and under went treatment. That means, without applying for and securing leave, he has done so. It is the complaint of the Respondents that he was frequently absenting himself from duties unauthorizedly causing inconvenience and hardship to the Respondents. The very fact that he failed to secure any leave, though he was hospitalized clearly indicates there is substance in the contentions of the Respondents. He further admitted while he was under cross examination as WW1 that Respondent organization asked him to offer resignation, but claimed that, that was after they served termination letter on him. But the fact remains that there is substance in the contentions of the Respondents that due to the frequent absence from the duty on the part of the Petitioner without intimation, hardship was there for them. Petitioner though, there was some reasonable cause for his absence like sickness, he failed to inform of the same to the Respondents and he never sought for grant of any leave. This conduct on his part indicates that he was consciously committed the lapse of unauthorized absence from duties. Considering all these circumstances one can not say that termination of the service of the Petitioner from duties is in any way incorrect. But terminating his services without assigning any reasons in the termination letter is not correct and proper. In any view of the matter for this reason, the impugned termination order is liable to be set aside if it is an industrial dispute.

16. But since, the present dispute is not an Industrial Dispute as per the finding arrived at while deciding Point No.I, this forum shall not interfere with the impugned order.

This point is answered accordingly.

17. Point No. III :

In view of the finding given in Point Nos. I and II Petitioner is not entitled for any of the reliefs sought for.

This point is answered accordingly.

Result:

In the result, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 13th day of February, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S.C. Roy	MW1: Sri Col. Suresh G

Documents marked for the Petitioner

Ex.W1: Photostat copy of the termination order dt.16.9.2010

Ex.W2: Photostat copy of letter of reply to Ex.W1

Ex.W3: Photostat copy of legal notice dt.8.12.2010

Ex.W4: Photostat copy of postal receipts (3 nos.) dt. 9.12.2010

Ex.W5: Photostat copy of acknowledgement (2 nos.)

Ex.W6: Photostat copy of lr No.N-24006/EMERA, showing the grants from the Central Government

Documents marked for the Respondent

Ex.M1: Photostat copy of termination order dt.16.8.2010

Ex.M2: Photostat copy of reply notice dt.15.1.2011

नई दिल्ली, 25 मार्च, 2014

का.आ. 1138.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 172/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/22/97-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 172/2005) of the Central Government Industrial Tribunal/Labour Court, No. II Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala and their workmen, which was received by the Central Government on 25/03/2014.

[No. L-12012/22/97-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : SRI KEWAL KRISHAN, PRESIDING OFFICER.

Case No. I.D. No.172/2005

Registered on 19.11.1997

Sh. Anil Kumar,
C/o Luxmi Beat House,
Railway Road,
Narwana Distt- Jind. .....Petitioner

Versus

The General Manager (Operations),
State Bank of Patiala,
Head Office,
The Mall, Patiala. .....Respondent

APPEARANCES

For the workman Sh. H.S. Hundal Adv.

For the Management Sh. N.K. Zakhmi Adv.

AWARD

Passed on- 20.2.2014

Central Government vide Notification No. L-12012/22/97/IR(B-I) Dated 5.11.1997, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of State Bank of Patiala in imposing penalty of removal from services w.e.f. 10.2.96 on Sh. Anil Kumar ex-clerk-cum-typist is legal and just? If not to what relief the concerned workman is entitled to and from what date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was working as Clerk-cum-typist with the respondent-bank at Khanauri when he was served with a charge-sheet dated 13.5.1994 to which he submitted reply. That an Inquiry Officer was appointed who submitted report and on the basis of the report, his services were terminated vide order dated 25.3.1996 after serving a show cause notice. His appeal was also dismissed. His dismissal is illegal as charge-sheet served was not accompanied by the list of witnesses, list of documents and it does not disclose on what evidence it was based. The Inquiry Officer conducted the inquiry in haste and did not give the opportunity to the workman to examine expert witness and other documents needed in his defence. Inquiry Officer

recorded the findings which are perverse and did not consider the evidence which was in favour of the workman. The comments given by him were not duly considered by the Regional Manager. It is further pleaded that Sh. S.S. Mehmi who conducted the preliminary inquiry has specifically stated that fraud could not be committed without the involvement of the Branch Manager and the Cashier, but no action has been taken against the said person. Thus, all the proceedings are illegal and his termination is not sustainable and he be reinstated in service.

Respondent-management filed written reply pleading that a proper and legal inquiry was conducted and considering the inquiry report, the services of the workman were terminated which is legal and valid.

In support of its case workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management examined Inder Singh an Officer who filed his affidavit supporting the case of the respondent management.

I have heard Sh. H.S. Hundal, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management and perused the file carefully.

Workman was charge-sheeted vide charge-sheet dated 13.5.1994 and the relevant portion read as follow:-

(1) That you tempered with bank's record while by making fictitious entries in the following accounts of inoperative account interest bearing register and also received the payment of amount lying in these accounts by closing these accounts fraudulently on the dates noted below and subsequently destroying the record pertaining to these entries of the inoperative Saving Account interest bearing register by removing the relevant pages of the said register. The details the amount withdrawn fraudulently by you from the accounts are given below –

Sr. No.	Dated	Amount	Particulars
1.	8.10.93	Rs.2302/-	SB A/c 1025 of Sh. Harbans Singh
2.	22.10.93	Rs.1350/-	SB A/c 1453 of Sh. Jangir Singh
3.	11.10.93	Rs.1017/-	SB A/c 1191 of Sh. Maghar Singh
4.	15.10.93	Rs.111/-	SB A/c 1354 of Sh. Puran Singh
5.	8.12.93	Rs.1500/-	SB A/c 2644 of Sh. Ram Kumar
6.	17.12.93	Rs.1150/-	SB A/c 1412 of Sh. Paramjit Singh

(ii) that the vouchers dated 6.10.1993 were made missing from Khanauri Branch by you.

He submitted reply and finding it not satisfactory a regular inquiry was ordered. During the course of the inquiry, the management examined 12 witnesses and the workman has also examined two witnesses and placed certain documents on record. All the witnesses of the management were examined in the presence of the workman who cross-examined them. After considering the evidence led before it, the Inquiry Officer submitted a detailed report dated 27.9.1995 holding that charges are proved against him. It is nowhere pointed out that any Rules or Regulations was violated by the Inquiry Officer while conducting the inquiry. The list of documents and list of witnesses was not supplied along with the charge-sheet, the same do not itself vitiate the inquiry as the same was supplied to him during the inquiry proceedings. It cannot be said by stress of imagination that the Inquiry Officer acted in a biased manner. Workman was given due opportunity to lead his evidence and it is for him to examine any expert witness but if he failed, he cannot say that an opportunity was not given to him for the examination of the expert witness. Thus the workman has failed to make out a case that the inquiry held in the present case was not fair and proper rather, it is to be held that the inquiry conducted was legal and valid one.

Acting on the inquiry report the workman was dismissed from service vide order dated 14.5.1996 after serving of a show cause notice on him and the appeal preferred by him was also rejected. It was submitted by the learned counsel for the workman that the punishment awarded to the workman is harsh and he be awarded lesser punishment than termination of his service. Suffice it to say that the workman was working in the bank whose business depends on the honesty of its workers. But in the present case the workman has not only withdrawn the amounts from certain accounts fraudulently but destroyed the record which is a grave misconduct and in the circumstances the punishing authority has rightly awarded the punishment which do not call for any interference by this Tribunal.

In result, it is held that the action of the management in imposing the penalty of removal from service w.e.f. 10.2.1996 on the workman is legal and proper and he is not entitled to any relief and the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1139.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 667/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/03/2014 को प्राप्त हुआ था।

[सं. एल-41012/169/95-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 667/2005) of the Central Government Industrial Tribunal-Cum-Labour Court,No. II Chandigarh, now as shown in the Annexure in the Industrial Dispute between the management of Northern railway and their workmen, received by the Central Government on 25/03/2014.

[No. L-41012/169/95-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 667/2005

Registered on 25.8.2005

Sh. Puni Chand,
LR Pointsman,
Railway Station, Palampur,
Village Dhad & Tehsil Palampur,
District Kangra. (HP). .....Petitioner

Versus

Divisional Railway Manager,
Northern Railway, Ferozepur. .....Respondents

APPEARANCES

For the workman : Sh. Manoj Dhiman, Adv.

For the Management : Sh. N.K. Zakhmi, Adv.

AWARD

Passed on- 24.2.2014

Central Government vide Notification No. L-41012/169/95 - IR(B-I) Dated 21.1.1997, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Divisional Railway Manager, Northern Railway, Ferozepur in terminating the services of Sh. Puni Chand Ex. L.R. Pointsman Palampur Railway Station, Palampur w.e.f. 21.1.94 is legal and just. If not to what relief the workman is entitled to and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was illegally placed under suspension on 18.11.1991and without serving any charge-sheet, he was reinstated on 29.1.1992. Thus he is entitled to full pay for the said period from 18.11.1991 to 29.1.1992 as his suspension was illegal.

It is further pleaded that workman reported for duty to the Station Superintendent, PLMX who refused to allow him to join and asked him to report duty at Hussainpur. Since there was no order, he did not report for duty at Hussainpur. He was charge-sheeted for not joining the duty at Hussainpur and thereafter an inquiry was conducted and he was removed from service which is illegal. He filed an appeal/revision dated 25.4.1996 before the competent authority which was accepted and the punishment of removal was converted into a censure vide order dated 31.7.1997. This order absolves the workman from all the charges. That the workman is entitled to full back wages and with installments of D.A from 31.1.1992 to 5.9.1997; 4 notional holidays and full TA during the inquiry period; LAP, HAP and CL from 18.11.1991 to 5.9.1997, packing allowances etc. and also all the benefits of his promotion to A-Grade in the scale of Rs.3050-4590 as the same was not given to the workman on the allegation that SF-5 was pending against him.

It is further pleaded that workman joined the duty on 11.9.1998 and the respondent management proceeded to recover penal rent for Quarter No.T-8-D w.e.f. 20.1.1994 to 5.12.1996 and the said order is also illegal as he was never asked to vacate the quarter.

Thus it is pleaded that the above said claim be given to the workman.

The management filed written statement pleading that on the message dated 14.11.1991, the workman was placed under suspension for misbehaving with the Station Superintendent. That the workman did not attend the office since the day of his suspension and remained absent. He was transferred from PLMX to HSQ vide order dated 8.12.1991. His suspension order was revoked vide message dated 29.1.1992 and he reported for duty and Station Superintendent directed him to report to TI/PTK for getting himself spared for transfer to HSQ but the workman did not report for duty and thereafter continuously remained absent. Since he remained absent, he was issued charge-sheet dated 26.3.1992 for imposing a major penalty and after completion of all the proceedings, copy of the inquiry report was sent to him vide order dated 2/8.9.1993 and was asked to join duty at HSQ but he did not join the duty. Again a notice dated 22.12.1993 was issued to him to join the duty on 20.1.1994 and when he failed, his services were terminated vide order dated 4.2.1994. He preferred a revision petition and the same was sent to General Manager (P) and his penalty was reduced to censure vide order dated 31.7.1997 and he joined his duty on 5.9.1997. That his absence period from 31.9.1992 to 5.9.1997 was treated as follow:-

LAP

31.1.92	to	27.3.92	=	57 days
1.7.92	to	15.7.92	=	15 days
1.1.93	to	15.1.93	=	15 days
1.7.93	to	2.7.93	=	02 days
		Total	**=**	**89 Days**

HAP

28.3.92	to	30.6.92	=	95 days
16.7.92	to	31.12.92	=	169 days
16.1.93	to	19.2.93	=	35 days
3.7.93	to	12.7.93	=	10 days
1.1.94	to	10.1.94	=	10 days
1.7.94	to	10.7.94	=	10 days
1.1.95	to	10.1.95	=	10 days
1.7.95	to	10.7.95	=	10 days
1.1.96	to	10.1.96	=	10 days
1.7.96	to	10.7.96	=	10 days
1.1.97	to	10.1.97	=	10 days
1.7.97	to	10.7.97	=	10 days
		Total	**=**	**389 days**

LWP

20.2.93	to	30.6.93	=	131 days
13.7.93	to	31.12.93	=	172 days
11.1.94	to	30.6.94	=	171 days
11.7.94	to	31.12.94	=	174 days
11.1.95	to	30.6.95	=	171 days
11.7.95	to	31.12.95	=	174 days
11.1.96	to	30.6.96	=	172 days
11.7.96	to	31.12.96	=	174 days
11.1.97	to	30.6.97	=	171 days
11.7.97	to	5.9.97	=	057 days
		Total	**=**	**1567 days**

Workman was promoted in September 1998 and his salary was fixed as per Rules and the arrears have been drawn. That he is not entitled to any causal leave and he is not entitled to TA as he was not transferred from one place to another.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the respondent management has examined Sh. Banwari Lal, Chief Office Superintendent who filed his affidavit supporting the case of the respondent management and also filed all the documents.

I have heard Sh. Manoj Dhiman, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management and has gone through the file carefully.

It was contended by the learned counsel for the workman that the workman was illegally placed under suspension vide order dated 18.11.1991 and was taken back on duty and when he reported for duty on 30.1.92 at PLMX, he was not allowed to join the duty and the letter regarding his transfer came into existence later on. It was further contended that the penalty of removal from service was reduced to 'censure' vide order dated 31.7.1997 and being so, his absence is to be treated as duty period and he is entitled to increase in pay from 31.1.1992 to 5.9.1997 along with TA etc. and in the circumstances he be paid all the benefits as claimed by him the claim petition.

It is not disputed that the Station Superintendent, PLMX reported on 14.11.1991 that he was mishandled by the workman as is clear from the letter (Annexure A1) and he was placed under suspension vide order of the same date (Annexure A2). He was asked to join duty vide order dated 29.1.1992 (Annexure A5) but prior thereto he was transferred from PLMX to HSQ vide order dated 8.12.1991 (Annexure A4). According to the management the Station Superintendent PLMX spared him and asked him to join duty as per his transfer orders but he did not join the duty and unauthorizedly remained absent from 31.1.1992. Thereafter a charge-sheet was served on him for remaining absent from duty and there is no denial of the fact that the inquiry was conducted and the Inquiry officer submitted its report. The workman did not challenge the Inquiry report on any of the ground whatsoever. Again there is no denial of the fact that the workman was provided a copy of the inquiry report and was again asked to join the duty vide letter dated 2/8.9.1993 (Annexure A7) but he did not join the duty. Again a notice dated 22.12.1993 (Annexure A8) was sent to him but he did not join the duty and consequently his services were terminated vide order dated 4.2.1994. Again it is admitted case that an appeal preferred by him was dismissed, but in revision the penalty was reduced to a 'censure'.

If the penalty imposed was reduced to 'censure' the same do not ipso facto entitle the workman to claim the benefits as asked for in the claim petition as his guilt for remaining absent from duty stood proved during the inquiry proceedings and on the basis of the inquiry report, the penalty of 'Censure' was imposed on him and he cannot say that he is entitled to all the benefits during the period he remained absent from duty.

The period during which he remained absent i.e. from 31.1.1992 to 5.9.1997 was treated as LAP, HAP and as the leave of the kind due vide order dated 29.4.2000 (Annexure 18) and as reproduced above; and it cannot be said that the competent authority did not pass any order and workman cannot claim the pay for the whole period. Since he remained under suspension he cannot claim any casual leave or any TA etc. There is nothing on the file that any benefit of the workman was withheld by the management on being promoted as Pointsman A-Grade vide order dated 24.9.1998. It is not shown that the respondent management cannot recover the penal rent for the quarter which remained in the occupation of the workman. Thus, workman is not entitled to any of the reliefs claimed.

The reference was whether the termination of the services of the workman was legal and just, but his termination was already set aside by the competent authority and only punishment of censure was imposed which is held to be legal and valid as departmental inquiry has not been challenged on any of the ground. The workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1140.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, नं. II चण्डीगढ़ के पंचाट (संदर्भ संख्या 1346/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-03-2014 को प्राप्त हुआ था।

[सं. एल-12012/185/2004-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.1346/2008) of the Central Government Industrial Tribunal/Labour Court, No. II Chandigarh, now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 25-03-2014.

[No. L-12012/185/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 1346/2008

Registered on 17.1.2008

Sh. Kanwar Bhan,
R/o Village Adiyana,
District Panipat (Hr). .....Petitioner

Versus

The Chief Manager,
State Bank of India,
Panipat. .....Respondent

APPEARANCES :

For the workman : Sh. Naveen Daryal Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

(Passed on- 21-2-2014)

Central Government vide Notification No. L-12012/185/2004 IR(B-I)) Dated 28.12.2007, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of State Bank of India, Panipat in terminating the services of Sh. Kanwar Bhan S/o Sh. Surat Singh, Guard w.e.f. 28.10.2002 is just and legal? If not, to what relief the workman is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that the respondent bank vide its letter dated 8.5.2000 (Exhibit P2) sent requisition for the services of Ex-serviceman and in response to the said letter the Zila Sainik Board, Panipat recommended the name of the workman vide letter dated 9.5.2000. That the workman has worked with the respondent management from 10.5.2002 to 28.10.2002 continuously but was not allowed to do his duty after 28.10.2002 which amounts to retrenchment and thus his services were retrenched without complying with the provisions of Section 25F of the Act. That the management kept in service the persons who were junior to him and also regularized the services of certain persons and thus there is a contravention of the provisions of Section 25G and 25H as well as Section 25N of the Act. That the respondent bank is a commercial establishment and it cannot dispense with the services of the workman.

Respondent management filed written statement pleading that the workman was engaged purely on need basis as a Badli Guard against a leave vacancy from 10.5.2002 to 28.10.2002 and separately at another branch on seven occasions and he actually worked for 88 days. Since the workman was engaged only as a Badli Guard, the provisions of the Act have not been violated and he is not entitled to any benefit under the Act.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand management examined Sh. S.C. Sharma, Chief Manager who filed his affidavit supporting the case of the management.

I have heard Sh. Naveen Daryal, counsel for the workman and Sh. N.K. Zakhmi counsel for the management.

It was argued by the learned counsel for the workman that workman was employed by the bank through Zila Sainik Board, Panipat and he did his duty for 92 days and further carried me through Section 22 of the Punjab Shops and Commercial Establishments Act, 1958 to submit that since the workman worked for more than 90 days, he was not to be removed from service without service of notice etc. and thus the management has contravened the provisions of Section 25F of the Act. It was further contended that the persons junior to the workman were retained in service and even after retrenchment of the workman new recruitment was made and thus there is a contravention of other provisions of the Act also and the workman is entitled to be reinstated in service with all the benefits.

I have considered the contention of the learned counsel.

According to the workman he worked for 92 days with respondent bank, whereas according to the bank, he worked for 88 days. Be that as it may, the question to be seen is whether the workman falls within the definition of 'retrenchment' in order to get benefits under the Act. 'Retrenchment' has been defined in Section 2(oo) as termination by the employer of the service of a workman for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action.

Section 25F prescribes the conditions to retrench a workman and provides that no workman who has been in continuous service for not less than one year shall be retrenched except on the conditions prescribed in the said Section. 'Continuous service' has been defined in Section 25B of the Act and provides that a workman is deemed to be any continuous service for a period of one year if he actually worked for not less than 240 days during a period 12 calendar months.

Thus a workman who has worked for 240 days entitled to notice or compensation in lieu of notice as prescribed under Section 25F of the Act. But in the present case, according to the workman himself he worked only for 92 days and therefore he do not fall within the definition of 'retrenchment' and cannot claim the protection of Section 25F of the Act. Similarly, he cannot say that Section 25G and 25H of the Act has been violated in his case.

Section 22 of the Punjab Shops and Commercial Establishment Act provides that no employee shall be removed from service without one month's previous notice or pay in lieu thereof but the jurisdiction under the said Section only vest with the Judicial Magistrate and not in this Tribunal. Since the workman is not a 'retrenched' employee, he is not entitled to the protections as provided under the provisions of the Act.

It may also be added that workman himself admitted that he was employed as 'Badli Guard' and used to work in the leave vacancy of the Guard. Thus, his statement shows that he was temporarily employed against a leave vacancy and as such he cannot claim to be employed as Guard as a matter of right and on this score also, he is not entitled to any relief, as his services were to be discontinued on joining of the duty by the person in whose place he was employed.

In result, it is held that action of the respondent management in terminating the service of the workman w.e.f. 28.10.2002 is legal and valid and workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1141.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 9/12, 10/12, 11/12, 12/12, 13/12, 14/12, 15/12, 16/12, 17/12, 18/12 और 1/13) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-03-2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 9/12, 10/12, 11/12, 12/12, 13/12, 14/12, 15/12, 16/12, 17/12, 18/12 & 1/13) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, now as shown in the Annexure

in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 25/03/2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PRESIDING OFFICER : SHRI R.B.PATLE

(1) CASE NO. CGIT/LC/RC/9/2012

Shri Umesh Kumar Saini,
S/o shri Uma Shankar Saini,
H. No.330/1, Ranipur, Shukla Nagar,
Madanmahal, Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(2) CASE NO. CGIT/LC/RC/10/2012

Shri Mukesh Kumar Saman,
S/o Late Shri Ramesh Prasad Saman,
R/842, Belbag Toria,
Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(3) CASE NO. CGIT/LC/RC/11/2012

Shri Rajkumar Sen,
S/o Shri Banshi Lal Sen,
R/o H.No. 2801/21, Adarsh Colony,
Adhartal, Jabalpur
Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(4) CASE NO. CGIT/LC/RC/12/2012

Shri Mukesh Kumar Burman,
S/o Shri Phoolchand Burman,
R/o E/4A, Near At Railway Qtr.,
Howbagh Gorakhpur,
Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(5) CASE NO. CGIT/LC/RC/13/2012

Shri Ramnarayan Pathak,
S/o Late Shri Gendalal Pathak,
R/o H.No. 1176,
Laxmi Bhavan, Hawbagh Station Road,
Gorakhpur, Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(6) CASE NO. CGIT/LC/RC/14/2012

Shri Ravindra Yadav,
S/o Shri Ramkishore Yadav,
R/o H.No.238,
Near Maszid at Rampur,
Jabalpur .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) ....Management

(7) CASE NO. CGIT/LC/RC/15/2012

Shri Mukesh Amrani,
S/o Shri Gunna Ram Amrani,
R/o Ashok Tea Stol,
Gandhi Chowk,
Pali Road, Umariya (MP). .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(8) CASE NO. CGIT/LC/RC/16/2012

Shri Sunil Kumar Nahar,
S/o Shri Kandhilal Nagar,
R/o 1566, Bhantalaiya,
Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(9) CASE NO. CGIT/LC/RC/17/2012

Shri Kriishna Kumar Singh,
S/o Late Shri Kishan Singh,
R/o H.No. 992, Aheer Mohalla,
Gorakhpur,
Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(10) CASE NO. CGIT/LC/RC/18/2012

Shri Nirvachan Kol,
S/o Late Dularwa Kol,
R/o Ujaniya Post,
Mehroai,
Distt. Umariya, MP .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

(11) CASE NO.CGIT/LC/RC/1/2013

Shri Ravi Yadav,
S/o Shri Buddhulal Yadav,
R/o Sharda Nagar, Bus Depot,
Karmeta, Distt. Jabalpur. .....Workman

Versus

Managing Director,
State Bank of India,
Head Office, Indore (MP) .....Management

AWARD

(Passed on this 24th day of February 2014)

1. These proceedings are submitted under Section 2(A)(2) of I.D. Act by respective workmen. As per order dated 17-2-2014 on application submitted by Ist party workman in case No. 9/12, all those proceedings are clubbed for common judgment. Though the applications are submitted by individual workman separately, their contentions are identical except the date of their appointment. The applicants submitted that they are employees of Respondent No.1 Bank working on post of messenger on daily wages. Respondent No.1 Bank is merged in Respondent No. 2, SBI. Workman are thrown out of employment after merger of Respondent No.1 in Respondent No. 2 SBI. It is submitted that the Union submitted dispute before RLC(C), Bhopal vide application dated 3-9-10. The conciliation proceedings were not fruitful. RLC submitted failure report vide letter dated 27-6-2012 to Govt. of India.

2. It is further submitted that during pendency of conciliation proceeding before RLC, some employees filed Writ Petition No. 15314/2010 before Hon'ble High Court. The writ was disposed off by Hon'ble High court on 27-9-2012 directing workman to take recourse to remedy available under I.D. Act. Directions were also given by Hon'ble High Court that Industrial Court/Labour Court to decide such proceedings within six months. That workman in Case No. 9/12 had raise dispute before RLC, failure report was submitted in the matter on 27-6-2012. All the workmen have proposed dispute as under-

> "Whether the termination of workman is justified and legal? If not, to what relief he is entitled and which direction should be given to the management? Further whether the action of the respondents Bank in not continuing the services of the workman after merger of the respondents Bank in the light of the Gazette notification dated 28-7-2010 is legal and justified? If not, to what relief he is entitled and which direction should be given to the management?"

3. Respective workman further submits that they are qualified and educated were appointed in the State Bank of Indore in Case No. 9/12 on 20-1-99, Case No. 10/12 on 3-3-99, in case No. 11/12 on 21-6-98, in Case No. 12/12 on 15-3-98, in Case No. 13/12 on 1-4-99, in Case No. 14/12 on 26-2-99, in Case No. 15/12 on 2-8-03, in Case No. 16/12 on 4-7-98, in Case No. 17/12 on 4-6-06, in Case No. 18/12 on 2-8-03 and in Case No. 1/13 on 3-2-00 on daily rate basis. All the workmen claimed that they worked honestly, sincerely. That they were appointed following prescribed procedure under law. That they were paid less emoluments. The workman were hopeful that their services would be regularized after passage of time. Therefore they continuously rendered their service. That their wages were paid through cheque by the Bank.

4. The workman further submits that as per decision and settlement between respondent No.1and 2, the State Bank of Indore is merged in State Bank of India. The formalities are completed. The settlements in respect of employees and offices and other liabilities have also been finalized. That no steps are taken to protect interest of those workmen therefore Union raised demand to safeguard their right. All the workman claimed to have rendered service for 15-20 years though their date of joining service is specifically stated in Para-5 of their application. That merger has been approved by Government issuing notification in Gazette published on 28-7-2010. Clause 7 of the notification deals with that every permanent officer and other permanent employee of the Transferer Bank including the officers or employees on probation (except the Board of Directors and executive trustees) serving in the employment of the transferor Bank immediately before the effective date shall hold his office or service therein in the Transferee Bank on such terms and conditions as may be approved by the Central Board of the transferee bank and shall continue to work as an officer as the case may be employee of the transferee bank. Provided that the pay and allowance offered to the offices or employees of the transferor bank shall not be less than the overall pay and allowances as they would have drawn in the transferor Bank. Clause-8 of the notification is also reproduced which provides the officers or employees of the transferor bank shall be given an offer of employment of option letter in writing by the Transferee Bank and where an officer or other employee of the Transferor bank doesnot exercise any option, within a period of fifteen days from the date of the option letter given for exercising the option, to be in the employment of the transferee bank such officer

or employee shall be deemed to have accepted to continue in the service of the transferee bank.

5. Workman further submits that notification is clear that employee of the Respondent No. 1 Bank ought to have been continued in service. Alternately they should give option provided in the notification of merger. That no steps are taken as per notification calling option of the workman. The notification debars workman to approach Court/Tribunal for the dispute. It is violation of the welfare policy of the Central Govt.

6. Workman submits that they were continuously working since their initial engagement on daily wages without any break. That they had completed 240 days continuous service during each of the year of their service. That because of the merger of Respondent No.1 in Respondent No.2 Bank, their services are terminated by oral order from 14-8-2010 in Case No. 9/12, from 23-8-2010 in Case No.10/12, from 23-8-2010 in Case No. 11/12, from 28-7-2010 in Case No. 12/12, 31-8-2010 in Case No. 13/12, from 21-8-10 in Case No. 14/12, from 21-8-2010 in Case No. 15/12, from 21-8-2010 in Case No. 16/12, from 30-8-2010 in Case No. 17/12, from 29-5-2010 in Case No. 18/12 and from 21-8-2010 in Case No. 1/13.

7. All the workmen submits that IInd party Bank is covered as industry under Section 2(j) of I.D.Act. They are covered as workman under Section 2(s) of I.D.Act. That provisions of Section 25-F, G, H & 25(N) of I.D.Act are applicable to them, their services are terminated in violation of section 25-G, F, H , 25-N of I.D.Act. that termination of their services is covered as retrenchment under Section 2(oo) of I.D.Act. Management has not violated mandatory provisions of I.D.Act. Notice was not issued to them, retrenchment compensation was not paid to them by the management. That they were appointed following prescribed procedure as per law. They have acquired status of permanent employee. Their claim for regularization was pending before Conciliation Officer. During pendency of conciliation proceedings, their services are illegally terminated by the Bank in violation of Section 33 of I.D.Act. All the workmen submits that termination of their service is illegal. They were not given opportunity of defence. On such ground, workman prays for setting aside their termination and management be directed to reinstate them as peon with back wages.

8. IInd party filed Written Statement in all cases. Written Statement filed by IInd party No.2 is identical. IInd party submits that application filed under Section 2A(2) of I.D.Act is not tenable. Separate application was filed challenging liability of proceeding filed without filing conciliation proceeding challenging their termination. Said application has been rejected in all cases as per order dated 20-6-2013. IInd party further submits that State Bank of India is established under Section 3 of State Bank of India Act, 1955 to carry on the business of banking and other business. Section 35 of the Act provides power and procedure for acquisition of business of other banks by the State Bank of India. The State bank of India with the sanction of Central Govt. and in consultation with the Reserve Bank entered into negotiation for acquiring the business including assets and liabilities of the State Bank of Indore. In exercise of powers under Section 35(2), Central Govt. accorded its sanction to the acquisition vide notification dated 28-7-2010. That Clause 7 & 8 of the said notification are reproduced. As per clause 7, every permanent officer of other permanent employee of the Transferred Bank including the officers or employees on probation (except the Board of Directors and executive trustees) serving in the employment of the transferor Bank immediately before the effective date shall hold his office or service therein in the Transferee Bank on such terms and conditions as may be approved by the Central Board of the transferee bank and shall continue to work as an officer as the case may be employee of the transferee bank. Provided that the pay and allowance offered to the offices or employees of the transferor bank shall not be less than the overall pay and allowances as they would have drawn in the transferor Bank. As per Clause-8 of the notification the officers or employees of the transferor bank shall be given an offer of employment of option letter in writing by the Transferee Bank and where an officer or other employee of the Transferor bank doesnot exercise any option, within a period of fifteen days from the date of the option letter given for exercising the option, to be in the employment of the transferee bank such officer or employee shall be deemed to have accepted to continue in the service of the transferee bank. That notwithstanding provisions of I.D.Act, 1947 or any other law for time being in force, the transfer of service of officer or employee of transferor bank to be transferee bank shall not entitle such officer or other employee to any compensation under the provisions of the said I.D.Act or any other law and no such claim shall be entertained by the court, tribunal or any other authority. IInd party submits that Ist party workman who have been engaged on daily wages on temporary basis therefore he is not entitled to the option under notification dated 28-7-2010. The workmen have no right to continue in service of SBI. He cannot claim such direction to continue in service in State Bank of India. It is further submitted that several persons are engaged on daily wages by some of the branches, offices of State Bank of Indore without following the recruitment rules. Such persons cannot be absorbed in services of State Bank of India. It is submitted that All India State Bank of Indore Employees Coordination Committee raised dispute with respect of regularization of temporary workmen in State Bank of Indore before RLC, Bhopal. The said dispute was raised w.r.t. 342 persons. Management of Bank participated in conciliation proceedings filing suitable reply. The conciliation proceeding ended in failure. The report of failure of conciliation was submitted to Government on

27-6-2012. IInd party further submits that though efforts were made for searching details of working of workmen in State Bank of Indore , the record was not found about their working in any branch or the office of State Bank of Indore. IInd party strictly dispute that the workman had ever worked in State Bank of Indore.

9. IInd party has denied Ist party workman working as messenger on daily wage basis. Workmen have not disclosed name of the branch, office he was working. It is denied that because of merger of State Bank of Indore in State Bank of India, workman is thrown out of employment. It is submitted that after failure of conciliation, appropriate Government has referred matter to the Tribunal for adjudication. Relief is of regularization of the workman and not termination of their service. It is reiterated that workman have not stated anything about their qualification, no record is available in the Bank regarding their appointment in State Bank of Indore following prescribed recruitment procedure. Applicant also not produced such documents. It is denied that workmen were paid less emolument. That there is no provision for regularization of service of persons engaged on daily wage basis. That Central Govt. has issued notification for merger of State Bank of Indore in State Bank of India. The persons working on daily wages or temporary basis have no right to continue for indefinite period in State Bank of Indore. They have no right to continue service in State Bank of India. It is denied that as per clause-7,8 of the notification of merger, workman are entitled to an option to continue in State Bank of India. Such right is given only to the permanent officers and employees of State Bank of Indore. The notification doesnot deal with persons working on daily wage basis. It is denied that the notification violates policy of Government of India.

10. IInd party denies that workman have completed 240 days continuous service during any of the year. It is submitted that no record is available in that regard. It is not disputed that the IInd party Bank is covered as industry under I.D.Act. However it is submitted that business of State Bank of Indore is taken over by State Bank of India. Workman cannot invoke provisions of Section 25-F, G, N of I.D.Act. IInd party denies that workman were appointed after filing the recruitment procedure. It is denied that workman acquired status of permanent employee. It is reiterated that several persons were engaged temporary by some branch, office of State Bank of India. There were no vacancies after merger of business of State Bank of Indore, it is not possible for State Bank of India to continue service to all such persons. Therefore their services required to be dispensed with. However any record was not traced with respect of workmen in those cases. If those workmen furnishes necessary details of their working and satisfy requirement under Section 25-F of I.D.Act, IInd party is ready to pay compensation as per law. That it is not possible to continue those workmen in the Bank. That those workmen were engaged as daily wages, casual labours by State Bank of Indore due to exigencies they were never appointed against sanctioned vacant post following recruitment rules. IInd party referred to the ratio held in various cases by Apex Court submits that persons engaged on daily wages without following recruitment process are not entitled for reinstatement. That irregularities cannot be perpetuated. On such grounds, IInd party for rejection of the claim of all workmen.

11. Ist party workmen filed identical rejoinder in all the cases. Ist party submits that the services of workman are terminated due to merger of State Bank of Indore in State Bank of India. Their services are terminated by management without complying provisions of I.D.Act by oral order. It is denied that they were engaged without following recruitment rules. That they were working on the post of full time messenger. They were getting monthly salary from IInd party No.1. they were regularly working more than 240 days during each of the year. They are covered under Section 25-F of I.D.Act. That workmen was working in Gorakhpur branch from their initial appointment till date of termination, management has not issued notice, no retrenchment compensation is paid. Management not followed Section 25-G, H of I.D.Act before termination of their services. Management not complied with Rule 77, 78 of Industrial Dispute(Central) Rules 1957. Reference is also made to directions issued by Hon'ble High Court in Writ petition No. 15314/2010. That they are thrown out of employment after notification of merger dated 28-7-2010. That all the workmen submits that they are entitled to be continued in service by the IInd party Bank, oral termination of their service is illegal. On such grounds, all workmen prays for their reinstatement with back wages.

12. Considering pleadings between parties and order dated 20-6-2013 rejecting objection to the tenability of these proceedings, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the IInd party No. 2 Bank in not continuing service of workman in Bank after merger of State Bank of Indore as per notification dated 28-7-2010 is legal and justified?	In Affirmative
(ii) whether the termination of workman Shri Umesh Saini from 14-8-2010 in Case No. 9/12, Mukesh Saman from 23-8-2010 in Case No.10/12, Raj Kumar Sen from 23-8-2010 in Case No. 11/12, Mukesh Burman from 28-7-2010 in Case No. 12/12, Ramnarayan Pathak from 31-8-2010 in Case	In Negative

No. 13/12, Ravindra Yadav from 21-8-10 in Case No. 14/12, Mukesh Amrani from 21-8-2010 in Case No. 15/12, Sunil Nahar from 21-8-2010 in Case No. 16/12, Krishan Kumar Singh from 30-8-2010 in Case No. 17/12, Nirvachan Kol from 29-5-2010 in Case No. 18/12 and Ravi Yadav from 21-8-2010 in Case No. 1/13 is legal and justified?

(iii) If so, to what relief the workman is entitled to? As per final order.

REASONS

13. Workman in all those cases have pleaded that as per Clause-7 of the notification of merger, the employees and officers of State Bank of Indore have right to be continued in services. As per clause-8 of the notification of merger, the officers and employees of the State Bank of Indore shall be given an offer of employment of option letter. The option is required to be called from officers/ employees, the option is to be submitted within 15 days. If the officer/ employee fail to submit their option within 15 days, it is deemed that officer/employee is deemed to have continued in service of the transferee Bank i.e. State Bank of India. Learned counsel for workman Mr. Verma during course of argument pointed out that management's witness in his cross-examination has stated that the workmen are not continued in service because of merger of the Bank. That the branch is not closed, the business is not closed. all other employees are working. As per pleadings and evidence by parties, the notification of merger daed 28-7-2010 was not in dispute. Point No.1 directly relates to whether the Ist party workman in all the cases have right to be continued in service as per notification of the merger. The copy of notification in gazette dated 28-7-2010 is produced. Counsel for IInd party management has admitted said notification. Clause-7 of the notification deals with that every permanent officer or other permanent employee of the Transferred Bank including the officers or employees on probation (except the Board of Directors and executive trustees) serving in the employment of the transferor Bank immediately before the effective date shall hold his office or service therein in the Transferee Bank on such terms and conditions as may be approved by the Central Board of the transferee bank and shall continue to work as an officer as the case may be employee of the transferee bank. Proviso is clear that the pay and allowance offered to the offices or employees of the transferor bank shall not be less than the overall pay and allowances as they would have drawn in the transferor Bank.

Clause-8 of the notification deals with the officers or employees of the transferor bank shall be given an offer of employment of option letter in writing by the Transferee Bank and where an officer or other employee of the Transferor bank does not exercise any option, within a period of fifteen days from the date of the option letter given for exercising the option, to be in the employment of the transferee bank such officer or employee shall be deemed to have accepted to continue in the service of the transferee bank.

Above clauses do not include temporary casual employees engaged on daily wages. All the workmen filed affidavit in support of their claim stating that they were appointed against vacant post of messenger. They have stated that they were engaged on daily wages. Payment vouchers are produced in all the cases. Workman in their cross-examination have stated that they were paid wages by voucher. Workmen have not produced appointment letters, any documents regarding their appointments made after filing conciliation process. The management's witness Chandan Kumar in his evidence has stated that all the workmen were engaged on daily wage basis by State Bank of Indore without following recruitment procedure. In his cross-examination, he claims ignorance whether list of daily wage employees working in bank was prepared. He stated that the merger document did not provide for absorption of daily wage employees therefore daily wage employees are not absorbed in service. Careful reading of clause-7,8 of the notification of merger doesnot find reference of employees engaged on daily wage basis. Both the clauses deals with only the permanent employees engaged in the transferor Bank. The notification of merger doesnot give any right to continue in service to the daily wage employees therefore I record my finding in Point No.1 in Negative.

14. Point No.2- before dealing with evidence adduced by parties, it is convenient to consider the arguments advanced by counsel for the parties. Learned counsel for workman Shri Verma submits that workmen were appointed/ engaged on different dates shown in the chart except Umesh Kumar Saini workman in Case No. 9/12, all the workmen have completed more than 240 days service preceding 12 months of termination of their services. Workman Umesh completed 212 days working considering Sundays and National holidays as provided under Section 25-B(2) of I.D.Act. His working days comes more than 260 days. That Section 25-F(a, b) of I.D.Act are mandatory. The services of the workmen were orally terminated without notice, no retrenchment compensation was paid, list of daily wage employee was not displayed on notice board. Rule 77 not followed. Section 25-F, G, H are violated. That as per section 35(8) of State Bank of India Act and Clause 9 of the merger notification, workman cannot claim compensation therefore they are entitled only for reinstatement. It is argued that for violation of Section 25-G, workmen are entitled only relief of reinstatement rather than compensation. The branches are not closed, business of State Bank of Indore is not closed. That unfair labour practice is committed by management under item 10,

Schedule V of I.D.Act. Reliance is placed on bunch of citations in support of his argument. I will deal with the citations at relevant point.

15. Learned counsel for IInd party Shri Ashish Shroti submits that the notification of merger issued on 28-7-2010 came in force after 30 days from 27-8-2010. The services of the workmen have been terminated prior to merger came in force. The services of workmen are discontinued by State Bank of Indore is not retrenchment by State Bank of India. That clause 7, 8 of merger notification not cover daily wage employees. Section 35(8) of State Bank of India Act prevails on I.D.Act, section 25(j) prevails on other acts. Section 25-FF, 25(fff) of I.D.Act deals with transfer, closure of the establishment. Compensation as per section 25-F of I.D.Act requires to be paid in both the cases. It is emphasized that the workmen were not working for 240 days uninterrupted period. Existence of seniority list is not proved. Seniority list is not produced therefore violation of Section 25-G is not established. Workmen are not entitled to reinstatement. Further argument were advanced in AIR-1986-132 relied by counsel for Ist party concession was made in said case by counsel for management. There is no specific pleading about unfair labour practice but argument was advanced that engagement of the workman varies more or less 10 years. It is emphasized that the workmen are not entitled to reinstatement as they were engaged on daily wages.

16. Learned counsel for workmen Mr. Verma in reply submits that as per Para-4 of the merger notification, liabilities of State Bank of Indore are transferred to State Bank of India. That section 2(j) of I.D.Act was amended in 1974 whereas section 35(8) of State Bank of India is earlier enactment. The compensation cannot be claimed by employees in view of clause 7,8,9 of merger agreement and Section 35(8) of State Bank of India Act. That Central Rule 77 is parimateria of Bombay Rul1 81. Said rule is not complied. Violation of section 25-G of I.D.Act is proved. It is emphasized that workmen be allowed reinstatement with back wages. Considering tenor of arguments of Section 25-j of I.D.Act, Section 35(8) of state Bank of India Act needs to be considered.

Section 25(j) of I.D.Act –

> " Laws inconsistent with Chapter-V(a) including standing orders made under Industrial Employment (Standing Orders)Act, 1946, provisions under Chapter V(a) of I.D.Act should prevail over provisions inconsistent with any other law including standing orders."

Section 35(8) of State Bank of India Act also provides that the agreement for time being in force on acquisition of the business and the assets and liabilities of any banking institution under said section prevents for the provisions of I.D.Act. no officer or other employee of the Banking institution is entitled to any compensation to which he may be entitled under that Act or that other law or that agreement and no claim in respect of such compensation shall be entertained by any court, tribunal or other authority, if on his having accepted in writing a offer of employment by the State Bank on the terms and conditions proposed by it he has been employed on terms and conditions proposed by it."

The notification of merger doesnot cover employees working on daily wages, no such right is given to the Ist party workman, no option is called from Ist party workmen for continuing their employment in the transferee Bank. The claim of the Ist party workman for compensation under I.D.Act cannot be barred under Section 35(8) of State Bank of India Act or Clause (9) of merger of the notification dated 28-7-2010.

17. Turning to the evidence, all the workmen have filed affidavit of evidence almost identical stating that they were working in State Bank of Indore from respective dates of their initial engagement i.e. Case No. 9/12 on 20-1-99, Case No. 10/12 on 3-3-99, in case No. 11/12 on 21-6-98, in Case No. 12/12 on 15-3-98, in Case No. 13/12 on 1-4-99, in Case No. 14/12 on 26-2-99, in Case No. 15/12 on 2-8-03, in Case No. 16/12 on 4-7-98, in Case No. 17/12 on 4-6-06, in Case No. 18/12 on 2-8-03 and in Case No. 1/13 on 3-2-00 till termination of their services i.e. from 14-8-2010 in Case No. 9/12, from 23-8-2010 in Case No. 10/12, from 23-8-2010 in Case No. 11/12, from 28-7-2010 in Case No. 12/12, 31-8-2010 in Case No. 13/12, from 21-8-10 in Case No. 14/12, from 21-8-2010 in Case No. 15/12, from 21-8-2010 in Case No. 16/12, from 30-8-2010 in Case No. 17/12, from 29-5-2010 in Case No. 18/12 and from 21-8-2010 in Case No. 1/13.

18. Shri Umesh Kumar in R/9/2012 has proved the payment vouchers Exhibit W-1(1) to W-1(142), bonus payment voucher are admitted and marked as Exhibit W-2(1) to W-2(12). In his cross-examination, he says written appointment letter was not given to him, he worked for about 11 years. Peon acquainted to him was working in the Bank, he has given information about the vacant post. He was interviewed by Branch Manager Shri Sharma, nobody had accompanied him at that time. The documents were made available to him by Branch Manager Mr. Dharmik. That he had not submitted application before RLC. Bhopal/ Jabalpur.

19. The cross-examination of workman in Cases 10/12 to 18/12 and 1/13 is similar. The evidence of management's witness and his cross-examination is similar. In Case No. 10/12, payment vouchers are produced at Exhibit W-1 to W-9 & M-1 to M-82, in Case No. 11/12- payment vouchers are produced at Exhibit W-1 to W-15 & M-1 to M-85, in Case No. 12/12- payment vouchers are produced at Exhibit W-1 to W-18 & entry in miscellaneous expenditure register

Exhibit M-1, in Case No. 13/12 – Payment vouchers is produced at Exhibit W-1 to W-23 & copy of payment charges at Exhibit W-24, vouchers Exhibit W-25 to 28, in Case No. 14/12- payment vouchers are produced at Exhibit M-1 to M-26, in Case No. 15/12-payment vouchers are produced at Exhibit M-1 to M-45, in Case No. 16/12-documents Exhibit W-1 to W-109, Exhibit M-1 to M-115 are produced regarding payment of wages to the workman Sunil Kumar, in Case No. 17/12, documents Exhibit W-1 to W-35 and copy of entries in miscellaneous expenditure register Exhibit W-36 are produced documents Exhibit M-1 to M-28 are produced by management regarding payment of wages to the workman, in Case No. 18/12-documents Exhibit W-1 to W-6 payment voucher and copy of entries in miscellaneous expenditure register are produced by Ist party Exhibit M-1 to M-46 produced by IInd party, in Case No. 1/13, documents Exhibit W-1 to W-109 are produced by Ist party. The charts are submitted by Ist party on the basis of documents produced in respective cases. The chart of working days prepared by Ist party shows working days in 12 calendar months preceding termination of the respective workman, working days are shown as- in Case No. 9/12- 212 days, Case No. 10/12 -262 days, in case No. 11/12 – 252 days, in Case No. 12/12 – 322 days, in Case No. 13/12 – 293 days, in Case No. 14/12 – 281 days, in Case No. 15/12 – 330 days, in Case No. 16/12 – 266 days, in Case No. 17/12 – 274 days, in Case No. 18/12 – 291 days and in Case No. 1/12- 260 days. The working days shown in the chart as per the documents were not in dispute during course of argument by learned counsel for IInd party.

20. Relevant portion in evidence in cross-examination of workman needs to be considered. In Case No. RC/13/12, Ram Narayan Pathak in his cross-examination says that he was working in Sadar cantonment branch, Regional office, Raipur branch. He was not given appointment letter. He denies that he had not worked for 240 days. His family is supported from pension of his wife. Shri Ravindra Yadav in Case no. 14/12 in his cross-examination says that he was paid weekly wages. He has worked for more than 240 days as messenger. Appointment letter was not given to him. He was interviewed by Branch Manager and his family details were asked for interview. Shri Mukesh Amrani in Case No. RC/15/12, in his cross-examination says that he was interviewed by Branch Manager, he worked till merger of the Bank. He worked under different Branch Managers. He was only candidate at the time of his interview. Almost similar evidence is deposed in their cross-examination by Shri Mukesh Kumar Burman in Case No. 12/12, Shri Ravi Yadav in Case No. 1/13, Shri Sunil Kumar Nagar in case No. 16/12, Shri Krishna Kumar Singh in Case No. 17/12 & Shri Nirvachan Kol in Case No. 18/12.

21. The management's witness Chandan Kumar has stated that workmen were engaged on daily wages by State Bank of Indore. Workmen did not work on the post of messenger on daily wages. He was not appointed against vacant post. Workmen did not work for 15-20 years. In his cross-examination, management's witness says that he was not acquainted with workman. He claims ignorance whether the workman was continuously working till 14-8-09 till date of merger. That branch is not working on Sunday and national holidays for about 60-70 days in an year. He claims ignorance whether list of daily wage employees working in the Bank was prepared. He denies that junior employees are still working in the Bank. He denies that the work done by workman is given to outsourcing agency. Management's witness admits that as merger document donot provide for absorption of daily wage employees, therefore daily wage employees are not absorbed in service.

22. Certain citations relied by Shri Shroti Advocate counsel for IInd party needs minute consideration. In Case of Regional Manager, State Bank of India versus Rakesh Kumar Tiwari reported in 2006(1) Supreme court Cases 530, their Lordship held Respondent workman's appointment being totally adhoc without following procedure in law, it would be ironical if they, who had benefited by the flouting of the rules of appointment could reply upon those very rules when their services were dispensed with. Their Lordship held there is no need for workman to have been in continuous employment within meaning of Section 25-B for applicability of Section 25-G & H. Similar view is taken by their Lordship in Case of Jaipur Development Authority versus Ramsahai and another reported in 2006(11) Supreme Court Cases 684, in case of Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8) Supreme Court Cases 750- workman claiming to have been in employment for 10 years with employer, if the employer did not produce record adverse inference was drawn by the Court. In present case, the documentary evidence is clinching that workmen have completed more than 240 days service. Therefore the ratio held in case cannot be applied to case at hand. Their Lordship dealing with section 25-G, H of I.D.Act held in absence of regular employment of workman employer is not expected to maintain seniority list of employees engaged on daily wages. In present case, evidence shows that the employees in all those cases are working about more than 4-10 years. He had completed 240 days continuous service as such were regularly working in State Bank of Indore prior to merger of State Bank of Indore in State Bank of India. There is no evidence by IInd party that their services were discontinued at any time therefore ratio in above case cannot be applied to case at hand.

23. The cases relied by counsel for Ist party workman in Devinder Singh versus Municipal Council Sanaur reported in AIR 2011-Supreme Court 2532. In Para-14 , their Lordship held that it is apposite to observe that the definition of workman also doesnot make any distinction between full

time and part time employee or a person appointed on contract basis. In Para 26, their Lordship held the other reason given by High Court is equally untenable. The appellant could hardly be blamed for the delay in the adjudication of the dispute by the Labour Court or the writ petition filed by the respondent. The delay of 4-5 years in the adjudication of disputes by the Labour Court/ Industrial Tribunal is a normal phenomena. If what the High Court has done is held to be justified, gross illegalities committed by the employer in terminating the services of workman will acquire legitimacy. In case of H.D.Singh versus Reserve Bank of India and others reported in AIR-1986 Supreme Court 132(1). Their Lordship held appellant entitled to set aside the order of Industrial Tribunal and directed respondent Bank to enlist the appellant as regular employee as Tikka Mazdoor to reinstate him and pay him his back wage upto date. In case of Robert D'Souza versus Executive Engineer, Southern Railway, reported in AIR-1982 Supreme Court 854(1). Their Lordship held termination of service of workman is brought about for any reason what so ever it would be retrenchment except in the case falls within any of the excepted categories i.e. termination by way of punishment inflicted pursuant to disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation, termination or the service on the ground of ill-health. In Para-21 their Lordship observed once it is held that operation of statutory rule in the Manual, the appellant had acquired a status of temporary railway servant, that the termination of service in the circumstances alleged doesnot constitute retrenchment, would the termination be still valid. Further 2302 prescribes the mode, manner and methodology of terminating service of a temporary railway servant and admittedly the procedure therein prescribed having not been carried out, termination is void and invalid. Their Lordship concluded in Para 27 and he declared that termination of service of the appellant was illegal and invalid and the appellant continues to be in service and he would be entitled to full back wages. In case of Krishan Singh versus Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) reported in 2010(3) Supreme Court Cases 637, their Lordship held discretion vested in Labour Court an Industrial Dispute relating to discharge or dismissal of workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50 % back wages. Considering pleadings of parties and evidence on record, interference by High Court was found not proper. In case of Harjinder Singh Versus Punjab State Warehousing Corporation reported in AIR 2010 Supreme Court 116, their Lordship held Section 25 G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year. In large number of cases like present one relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by lanes and side lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrongdoer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that microwages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and opportunity, the freedoms enshrined in the constitution remain illusory. Therefore the approach of the courts must be compatible with the constitutional philosophy of which the Directive principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer- public or private.

24. Workman in Case No. 9/12 Umesh completed 212 days working days during preceding 12 months of his termination. Learned counsel for Ist party workman Shri Verma submits that in the evidence in cross-examination of management's witness Bank was remaining closed on Sunday and National Holidays for 60-70 days. As per Section 25(B)(2) of I.D.Act, the Sunday and holidays needs to be included in the working days. There was no counter to above submissions.

Section 25(B)(2) of I.D.Act provides-

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ……..

(ii) 240 days, in any other case.

In calculation of period under Section 2(B) Sunday and holidays should be taken into account as per ratio held in Reddy versus Brook Bond referred in 1994-FLR 328(DB) in the commentary. Thus all the workmen have completed 240 days continuous service during 12 months preceding their termination. As per evidence of the management's witness, termination notice was not given,

retrenchment compensation was paid to the workmen. Seniority list was not displayed on notice board. The witness of the management in cross-examination in Case No. 9/12, management witness Chandra Mohan claims ignorance whether list of daily wage employees working in the bank was prepared. He denies that junior employees are still working in the Bank, in Case No. 10/12, management witness Shri Prakash Garehte says he did not see list of daily wager after merger of State Bank of Indore in State Bank of India, neither their Bank has prepared list of daily wager working in State Bank of Indore. In Case No. R/11/12, Shri Prakash Garehte in his cross-examination was unable to tell how many employees similar to workman Rajkumar were working in State Bank of Indore. He admits that services of employees of State Bank of Indore are transferred to State Bank of India as per merger notification. That there were no rules or direction for engaging daily wagers in State Bank of Indore or State Bank of India.

25. Industrial Dispute Central Rule 77 provides: the employer shall prepare a list of all workmen in particular category from which is arranged according to seniority of their services in that category and a copy thereof to be pasted on notice board in the premises of industrial establishment atleast 7 days before the actual date of retrenchment. No evidence is adduced by management regarding compliance of Rule 77 that list of daily wage employees discontinued from service was displayed on notice board 7 days before. Thus termination of services of Ist party workmen is in violation of Section 25-F, G of I.D.Act. Therefore I record my finding on Point No.2 in Negative.

26. Point No.3- In view of my finding in Point No.2, the termination of services of workmen in all cases is in violation of Section 25-F, G of I.D.Act, the question arises to what relief workmen are entitled. Learned counsel for workmen Shri Sanjay Verma pointing out my attention to merger notification- Clause 8,9 and Section 35(8) of State Bank of India Act submits that only reinstatement with back wages should be granted in all cases. In reply, Shri Shroti Advocate for IInd party submits that reinstatement is not automatic, facts and evidence needs to be considered. Both the counsel relied on bunch of citations.

27. The bunch of citations relied by counsel for Ist party Shri Sanjay Verma. Ratio held in 2006-5-SCC-127, 2006-5-SCC-173, 2007-5-SCC-742, 2007-9-SC-353, 2007-9-SCC-748, 2008-1-SCC-575, 2008-4-SCC-261, 2008-8-SCC-402, 2008-9-SCC-486, 2009-15-SCC-327, 2009-16-SCC-562, 2010-6-SCC-773, 2010-9-SCC-126, 2012-1-SCC-558, 2013-2-SCC-751, 2013-5-SCC-136, 1994-MPLJ-704. Their Lordship held that for violation of section 25-F of I.D.Act, reinstatement with back wages is not automatic, compensation is awarded Rs. 10,000 to 2 Lakh considering length of service and other aspects in the case.

> "In 1994-MPLJ-704, their Lordship held considering the peculiar circumstances of the case, in our opinion, it will be open to the Municipal Council to terminate the employment of five workmen for want of sanction of posts after complying with the pre-requisites of section 25-F of the I.D.Act but that would not give right to the Municipal Council not to pay full back wages till date of taking action."

Copy of judgment in writ petition No. 15091/2007 is also relied. In view of large number of citations from Supreme Court are relied by learned counsel for workmen, in the judgments cannot be beneficially applied to case at hand.

In case of Dalbir Singh versus Municipal Corporation 2011-SC-2532, their Lordship set-aside judgment of Hon'ble High Court allowing compensation and restoring the Labour Court judgment for reinstatement.

In case of Asstt. Engineer, Rajasthan Development Corporation and another reported in 2012(5) Supreme court Cases 136, relied by counsel for IInd party . Their Lordship observed in para 23 of the judgment that two decision in this court in Harjinder Singh and Devendra Singh upon his reliance has been placed by learned counsel for Respondent No. 23, 24. In case of Harjinder Singh, this court did not interfere in order of High Court which awarded compensation to workman by modifying the award of reinstatement passed by Lower Court. However on close scrutiny of facts, it transpires that was a case where a workman was initially employed by Punjab State Warehousing Corporation as work charge motor mate but after few months he was appointed as work munshi in the regular pay scale for three months. In para-25 of the judgment, their Lordship observed in Devendra Singh, workman was engaged by Municipal council, Sanaur on 1-8-94 for doing the work of clerical nature. He continued in service till 29-9-96. His service was discontinued w.e.f. 30-9-96 in violation of Section 25-F of I.D.Act. on industrial dispute being referred for adjudication, the Labur Court held that the workman had worked for more than 240 days in a calendar year preceding the termination of his service and his service was terminated without complying with the provisions of Section 25-F. Accordingly the Labour Court passed an award for reinstatement of the workman but without back wages. Upon challenge being laid to the award of the Labour Court, the Division Bench set aside the order of the Labour Court should not have ordered reinstatement of the workman because his appointment was contrary to the Recruitment Rules and Articles 14 and 16 of the constitution. In para-26, their Lordship observed in Devinder Singh, court has not dealt question about the consequential relief to be granted to the workman whose termination was held to be illegal being in violation of Section 25-F.

In AIR-1986-SC-132 case of H.D.singh versus Reserve Bank of India, their Lordship dealing with Section 25(B) (2) considering the record was destroyed, drawn inference that appellant worked more than 240 days. Ratio cannot be beneficially applied as all the workmen as per payment vouchers and documents completed 240 days continuous service.

In case of L.Robert Disouza versus Executive Engineer , Southern Railway in AIR-1982-SC-854(1) their Lordship setaside the order of High Court and declared that termination of service of appellant was illegal and invalid. The applicant continues to be in service would be entitled to full back wages.In cases Apex Court in (Para 24 Supra) held that for violation of Section 25-F of I.D.Act, reinstatement with back wages is not automatic. The facts and evidence of the case needs to be considered. The ratio in above cited case cannot be applied to case at hand.

In case of Krishan Singh versus Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak reported in 2010(3) SCC 637. Their Lordship considering no plea taken by employer before Labour Court that post in which workman was working was not sanctioned or his employment was not to satisfactory rules or that he was employed elsewhere, there was no vacancy. Their Lordship directed reinstatement with 50 % back wages.The facts of present case are not comparable. All the workmen were engaged on daily wages. There is no question of sanction of post therefore ratio in above case cannot be applied.

In case of Sunita Gupta versus Nagar Palika Parishad Sabalgarh and another reported in 2010(3)MPHT 243(DB). The petitioner was engaged as daily wager w.e.f. 1-9-98. Her services were terminated from 13-3-00. She worked for more than 240 days in 12 months, her termination was without following section 25-F of I.D.Act. Their Lordship allowed reinstatement without back wages. In view of ratio held in recent cases by Apex Court as relied by counsel for Ist party workman in para 24 supra, that for violation of Section 25-F, reinstatement with back wages is not automatic. The ratio held in above case cannot be applied.

In case of Shri Harjinder Singh versus Punjab State Warehousing Corporation reported in AIR 2010-SC-1116. Their Lordship found retrenchment of appellant in contravension of last come first go overruled. The award of reinstatement with back wages by Labour Court was restored. As held by the Lordship in 2013-5-SCC-136 para-26 discussed above in Devendra Singh's case the court has not laid principles about consequential relief to be granted to workman whose termination held to be illegal being in violation of Section 25-F.The principles cannot be applied to present case.

On point of violation of Section 25-G of I.D.Act relies on ratio held in case of Bhogpur Coop. Sugar Mills Ltd. Versus Harmesh kumar in AIR 2007-SC-288(1) . their Lordship dealing with Section 25-F, 2(oo)(bb) , 25(G) of I.D.Act held workman not completing 240 days of service, he was seasonal workman. Provisions of Section 25-G, H of I.D. Act do not apply.

In case of J.K.Synthetics Ltd. Versus K.P.Agrawal and another reported in 2007(2) Supreme Court Cases 433, their Lordship dealing with burden of proof , back wages held it is necessary for employee to plead that he was not gainfully employed from date of termination though employee cannot be asked to prove the negative, he has to atleast assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then burden will shift to employer. In present case, all the workmen in their evidence have claimed that they were unemployed after discontinuation of service in their cross-examination, they claims that their wife and other family members are supporting. The management has not adduced any evidence that any of the workmen is in gainful employment. The ratio held in case of Deepali 2013-10-SCC-324 relates to termination of a teacher. The facts of said case are not available. Therefore ratio cannot be applied to case at hand. Reliance is also placed in ratio held in AIR-1971-SC-2171. The ratio cannot be applied to case at hand as the trend is subsequently changed by the Apex Court in the matter of reinstatement with back wages is not automatic. Therefore the ratio cannot be applied to present case.

28. Counsel for IInd party Shri Shroti relies on ratio held in Case of District Red Cross Society versus Babita Arora and others reported in 2007(7) Supreme Court Cases 366. The facts of said case are not comparable as there was closure of one unit and remaining units of the hospital were functioning. Workman's claim for benefit of Section 25(G) was rejected. Ratio cannot be beneficially applied to present case.

In case of Regional Manager SBI versus Rakesh Kumar Tiwari reported in 2006(1) Supreme Court Cases 530, the respondent workman had not raised any plea in respect of violation of Section 25-G, their Lordship held it was not open to Tribunal to go on the tangent and conclude that termination of service of respondents was invalid. In present case, in their rejoinder all workmen have raised pleading about violation of Section 25-G of I.D.Act, Rule 77. Ratio cannot be beneficially applied. In case of Sr. Senior Superintendent Telegraph versus Santosh Kumar seal and others reported in 2010(6) Supreme Court Cases 773 , their Lordship considering workmen engaged on daily wages 25 years back worked hardly for 2-3 years-compensation Rs.40,000/- each was granted.

In present case, workmen have worked for different period. Workman in Case no. 9/12 was working from 20-1-99 to 14-8-10, in Case No.10/12 from 3-3-99 to 23-8-10, in Case No. 11/12 from 21-6-98 to 23-8-10, in Case No.12/12 from 15-3-98 to 28-7-10, in Case no.13/12 from 1-4-99 to 31-8-10, in Case No. 14/12 from 26-2-99 to 21-8-10, in Case

No. 15/12 from 2-8-03 to 21-8-10, in Case No. 16/12 from 4-7-98 to 21-8-10, in Case No. 17/12 from 4-6-06 to 30-8-10, in Case No. 18/12 from 2-8-03 to 29-5-10 & in Case No. 1/13 from 3-2-00 to 21-8-10. Workman in Case No.15/12 worked from 2-8-03 to 21-8-10 for about 7 years and workman in Case No.17/12 worked from 4-6-06 to 30-8-10 for about 4 years, workman in Case No. 18/12 worked from2-8-03 to 29-5-10 for about 7 years and workman in Case No 1/13 worked from 3-2-00 to 21-8-10 for about 10 years. The ratio in the Para 24 supra relied is clear that reinstatement with back wages is not automatic. The facts of each case needs to be considered. The workman who worked more than 10 years and workman working between 7,4 years needs different consideration. Workman who have completed 10 years service for long time deserves reinstatement with 50 % back wages. Employees working more than 7 years service deserves compensation Rs. 1,50,000 and workman working for about 4 years deserves compensation Rs.1,00,000. Accordingly I record my finding on Point No.3.

29. In the result, award is passed as under:-

(1) Workman in Case No. RC/9/12 to 18/12 & RC/1/13 are not entitled for continuation of service as per notification of merger dated 28-7-2010.

(2) Termination of workman in all cases i.e. RC/9/12 to 18/12 & RC/1/13 is illegal for violation of Section 25-F, G, H of I.D. Act.

(3) IInd party is directed to reinstate workman in Case No. RC/9/12, 10/12, 11/12, 12/12, 13/12, 14/12, 16/12, 1/13 with 50 % back wages and continuity of service within six weeks.

(4) IInd party is directed to pay compensation Rs.1,50,000 to workman in Case No. RC/15/12 & RC/18/12. IInd party is directed to pay compensation Rs.1,00,000 to workman in Case No. RC/17/12.

Amount as per above order shall be paid to workmen within six weeks. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1142.—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पीठासीन अधिकारी श्री राधेश्याम बापूजी पटेल को 10-03-2014 से छः माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सोंपते हैं ।

[सं. ए-11016/03/2009-सी.एल.एस.-II]

राजेश कुमार, अवर सचिव

New Delhi, the 25th March, 2014

S.O. 1142.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the CGIT-cum-Labour court, Bhubaneswar to Sh. Radheyshyam Bapuji Patle, Presiding officer, CGIT-cum-Labour Court, Jabalpur for a period of six months with effect from 10-3-2014 or till the post is filled on regular basis or until further orders whichever is earlier.

[No. A-11016/03/2009-CLS-II]

RAJESH KUMAR, Under Secy.

नई दिल्ली, 25 मार्च, 2014

का.आ. 1143.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 229/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/32/2002-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 229/2011) of the Central Government Industrial Tribunal-Cum-Labour Court-1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 25/03/2014.

[No. L-12012/32/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-TRIBUNAL-NO. I, DELHI

I.D. No. 229/2011

Shri Krishan Gopal Gupta,
S/o Shri Rajaram Gupta,
176, Panna Lal,
Jhansi – 284002 (U.P.) .....Workman

Versus

The Assistant General Manager,
State Bank of India,
Region-III, Zonal Office,
Jammu-180004. .....Management

AWARD

Special drive for recruitment of clerical staff in Ladakh region was initiated by State Bank of India (in short the bank). Claimant was selected as clerk/typist. Offer of appointment was given to him vide letter dated 07.10.1989 specifying therein that his candidature was being considered for appointment at Leh branch of the bank. He accepted the offer and joined at Leh branch of the bank on 22.04.1990. He worked there for a week and absconded on 30.04.1990. He resumed his duties on 26.10.1990. He was confirmed in services of the bank with effect from 27.04.1991. He got leaves for 15 days sanctioned and proceeded to his native place at Jhansi, Uttar Pradesh, on 30.04.1991. Thereafter he opted not to resume his duties. He sent volley of applications for leave on medical grounds, which applications did not find favours with the bank. Notices were sent, asking him to resume his duties but to no avail. Ultimately, notice dated 22.02.1996 was sent calling upon him to resume his duties within a period of 30 days, failing which he were to deemed to have abandoned his services. The clerk/typist, namely, Shri Krishan Gopal Gupta, opted not to join his duties, despite service of the said notice. He was deemed to have abandoned his services, vide letter dated 23.03.1996. Aggrieved by the said action of the bank, Shri Gupta raised a demand for reinstatement in service, which was not conceded to. Resultantly, he raised a dispute before the conciliation officer. Since his claim was contested by the bank, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal, Chandigarh, for adjudication, vide order No.L-12012/32/2002-IR(B1) New Delhi dated 17.05.2001 with following terms:

> "Whether action of Assistant General Manager, State Bank of India, Region III, Zonal Office, Jammu, in not transferring Shri Krishan Gopal Gupta, Clerk/Typist from Leh to Jammu on medical grounds and presumed to have been voluntarily resigned and abandoned his appointment in the bank with effect from 27.04.1991 is justified? If not, what relief the workman is entitled and from which date?"

2. Claim statement was filed by Shri Krishan Gopal Gupta pleading therein that he was appointed as clerk/typist by the bank, on his selection for that post by Banking Service Recruitment Board, Chandigarh. He was asked to join duties at Leh(Ladakh) branch. He gave joining report on 22.04.1990. His services were confirmed as clerk/ typist on 27.04.1991. He worked at Leh branch upto 30.04.1991 and proceeded on sanctioned leave of 15 days to his native place at Jhansi, Uttar Pradesh. While at Jhansi, he fell ill. On account of his ailment, he was not in a position to join duties. He moved various applications for leave, which applications were supported by medical certificates. Doctor told him that his illness was result of working at high altitude, where temperature used to go down to -30 degrees Celsius in winter season. On account of continued illness, which was directly attributable to living at very high altitude, he could not join his duties. He was examined by medical officer appointed by the bank at Jhansi, who opined that it was unsafe for him to join duties at Leh. From May 1991 to March 1996, leave applications were regularly sent by him to the bank. He also made continuous requests for his transfer from Leh to some other place in plains. From letter dated 08.08.1994, it was perceived that his application for transfer was under consideration. His request for transfer was bonafide, on account of his illness.

3. To his utter surprise, he received a letter dated 23.03.1996 wherein he was informed that he is deemed to have voluntarily resigned from his job with effect from 27.04.1991. Said action of the bank is illegal and void ab initio. No opportunity of being heard was given to him before passing the order. His absence from duty was neither unauthorized nor willful as he was prevented from joining duties at Leh on account of illness. The bank was not in a position to remove him from service with retrospective effect. He had never been absent from his work for a period of 90 days or more without submitting applications for leave. He had submitted sufficient documentary evidence about his illness and even the Board of Doctors, appointed by the bank, gave an opinion in his favour. He claims that order dated 23.03.1996 may be declared illegal and the bank may be commanded to reinstate him in service with continuity and full back wages. He also claims cost of litigation.

4. Claim was demurred by the bank, pleading that remedy of statutory appeal was not availed by the claimant, hence the dispute is not maintainable. Claim statement is hopelessly time barred. Claimant had filed a similar suit at civil court, Jhansi, which was decided against him. Claim is barred on principles of res judicata, pleads the bank.

5. The bank projects that special recruitment drive was initiated to recruit clerk/typist for Ladakh region by the bank. Incumbents, competing against that special recruitment drive, were well aware that their services were meant for Ladakh region in Jammu & Kashmir State. In case recruitment process would have been launched for posts in all areas of the country, there would have been toughest competition and remotest chance of selection for the claimant on the post of clerk/typist. Claimant accepted his appointment for Ladakh region and was estopped from backing out of his contractual obligations.

6. The bank pleads that after joining his duties on 24.04.1990, claimant absconded from his work place on 31.04.1990. He opted not to join his duties till 26.10.1990, despite repeated notices sent in that regard. When he was asked to show cause, he represented that he was confined

to bed due to illness. Taking a lenient view on his representation, claimant was allowed to resume his duties on 27.10.1990. After a short active service of about six months, claimant succeeded in getting leave of 15 days sanctioned in his favour. Thereafter, he never reported at his work place. He made representations to the bank, requesting for his transfer from Leh to Jhansi, where his spouse was working in Life Insurance Corporation of India. To achieve his motive, he exercised pressure upon the bank from a Member of Parliament. Allergic bronchitis, the disease from which he is alleged to have been suffering, is controllable disease and as such, claimant was never incapacitated to render his services at Leh. Notices dated 01.07.1992, 23.07.1992, 15.11.1994, 03.01.1996 and 14.02.1996 were sent to him calling upon him to join his duties. He opted not to join his duties. Lastly, notice dated 22.02.1996 was sent calling upon him to join his duties within a period of 30 days, failing which he were to deemed to have voluntarily abadoned his services. Since the claimant opted not to join his duties despite receipt of the aforesaid notice, his services were deemed to have been abandoned, vide letter dated 23.03.1996. Order passed by the bank is in conformity with his service conditions. The said order was passed by the competent authority. There is no case in favour of the claimant for grant of any relief, muchless the relief of reinstatement in service with continuity and full back wages.

7. The case was transferred to this Tribunal for adjudication, vide order No.L-12012/32/2002-IR(B-I) New Delhi dated 13.11.2002, by the appropriate Government.

8. Vide order No.Z-22019/6/2007-IR(C-II), New Delhi dated 11.02.2008, case was transferred to Central Government Industrial Tribunal No.2, New Delhi, for adjudication, by the appropriate Government. It was retransferred to this Tribunal for adjudication by the appropriate Government, vide order No.Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011.

9. On pleadings of the parties, following issues were settled by my learned predecessor:

(i) Whether the claim is premature and not maintainable as mentioned in Para No.2 of the preliminary objection?

(ii) Whether the petition is bad for non and mis-joinder of necessary party?

(iii) Whether claim is barred by time?

(iv) Whether the petition is barred under principles of res-judicata as per para No.5 of the preliminary objections?

(v) As in terms of reference.

(vi) Relief.

10. Claimant has examined himself and Shri Devender Sharma, Postal Assistant, to substantiate his claim. Shri Devender Kumar Sharma was examined by the bank to project its case. No other witness was examined by either of the parties.

11. Arguments were heard at the bar. Shri R.S. Saini, authorized representative, advanced arguments on behalf of the claimant. Ms.Kitu Bajaj, authorized representative, raised submissions on behalf the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No.1

12. At the outset it has been argued by the bank that remedy of appeal was available to the claimant against order dated 21.03.1996. He had not availed remedy of appeal and moved the Conciliation Officer straightway. The bank argued that the dispute, raised by the claimant, is pre-mature. Contra to it, Shri R.S. Saini, presents that the dispute was raised by the claimant before the Conciliation Officer in consonance with provisions of the Industrial Disputes Act, 1947 (in short the Act) and the Conciliation Officer entered into conciliation proceedings, which proceedings resulted into failure when the bank adopted a stubborn attitude. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government exercised its powers available under section 10(1)(d) of the Act and referred the dispute for adjudication. According to Shri Saini, the dispute is in consonance with spirit of the Act. For an answer to the above contention, it would be expedient to ascertain as to what term "industrial dispute" means. For construction of the term "industrial dispute", definition provided in section 2(k) of the Act is to be taken note of. Said definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

13. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with –(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

14. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all

"workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause(s) of section 2 of the Act. Here in the case the bank does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

15. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (I) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employement, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

16. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment, is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

17. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.)

Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

18. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

19. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

20. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256].

21. As noted above, provisions of the Act nowhere places embargo on a workman, or a union or considerable number of workmen to avail statutory right of appeal first and then seek redressal of grievance before the Conciliation Officer, to raise a dispute in that regard. A union or an individual workman is not saddled with a responsibility to prefer statutory appeal first and only then to raise an industrial dispute. Statutory appeal, if any, gives an additional remedy to a retrenched workman which he may avail, if finds proper. In case he does not avail the statutory remedy, provisions of the Act would not come in his way. Here in the case, claimant opted not to avail statutory right of appeal and sought redressal of his grievance before the appropriate forum under provisions of the Act. No illegality was committed by him in that regard. Submissions raised by the bank do not have any teeth to eschew the cause of the claimant. Resultantly, it is concluded that the dispute was properly raised. The issue is, therefore, answered in favour of the claimant and against the bank.

Issue No.II

22. When called upon to advance arguments as to how claim petition put forth by the claimant is bad for non-joinder or mis-joinder of necessary parities, Ms,Bajaj had to cut a sorry figure. She could not project as to who was the necessary party whom the claimant would have

impleaded in the arrays of respondents. Evidently, the bank miserably failed to discharge onus resting on it in that regard. It is crystal clear that the bank was the only party, that was to be impleaded in the dispute. The issue is, therefore, answered in favour of the claimant and against the bank.

Issue No.III

23. Next count of attack made by the bank is that the claim is hopelessly barred by time. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

24. As emerge out of the reference order, claimant raised a dispute before the Conciliation Officer in the year 2000. Conciliation proceedings failed and failure report was submitted to the appropriate Government, vide letter dated 21.01.2001. Thereafter, the appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal, Chandigarh, in May 2001. As projected above, order dated 21.03.1996 made it known to the claimant that he was deemed to have abandoned his service, on the strength of the aforesaid order in March 1996. Claimant approached the Conciliation Officer within a span of four years. This gap of four years is not so inordinate to conclude that the claim had become stale. There are no reasons to announce that the claimant raised a dispute before the Conciliation Officer after a long delay. Resultantly, it is held that the dispute has not become stale, which fact may frustrate right of seeking compulsory adjudication from an industrial adjudicator. The issue is, therefore, answered in favour of the claimant and against the bank.

Issue No. IV

25. In its written statement, bank pleads that similar suit was filed by the claimant before the Civil Court, Jhansi, wherein he suffered an order against him. The bank claims that the order passed by the civil court operates as res-judicata. Shri Saini argued that neither the said order has been placed before this Tribunal nor the Civil Court is competent to adjudicate an industrial dispute. For an answer to this proposition, law relating to doctrine of res-judicata would be noted. Law laid under section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Satyadhyan Ghosal (AIR 1960 S.C. 941) in following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again".

26. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

27. In Nawab Hussain, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:

> "The principle of estoppel per res-judicata is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [1939 (2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata."

28. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law ; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

29. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either – (a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogus to res-judicata are applicable.

30. Now it would be considered as to whether a Civil Court is competent to adjudicate an industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in Premier Automobiles Ltd. [1975 (II) LLJ. 445], wherein following principles were enunciated :

"(I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.

(III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.

(IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No.2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

31. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946- which can be called 'sister enactments' to Industrial Disputes Act- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly – i.e., without the requirement of a reference by the Government – in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India [2001 (7) SCC 1].

32. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the bank arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act. A Civil Court is not competent to adjudicate an industrial dispute. Hence, Principle (2) referred in para 30 and Principle (1), referred in para 31, do not come into play. Therefore, judgment of civil court cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the bank before this Tribunal. Issue is, therefore, answered in favour of the claimant and against the bank.

Issue No. V

33. In affidavit Ex.WW1/A, tendered as evidence, claimant unfolds that he worked at Leh branch of the bank upto 30.04.1991. He proceeded on leave for 15 days to his native place at Jhansi. He fell ill and could not join his duties. He applied for leave on medical grounds. Doctor opined that his illness was result of working at Leh, which is situated at an altitude of 12000 feet above sea level. Temperature remains very low during winter season at -30 to -35 degree centigrade and oxygen level is deficient there. He was not in a position to join his duties and as such applied for transfer from Leh to some other place in plains.

He had been virtually sending applications from May, 1991 to March,1996, which were supported by medical certificates. During course of his cross examination, he projects that on the instructions of the bank, he was medically examined at Jhansi and report in that regard is Ex.WW1/1.

34. In his affidavit Ex.MW1/A, tendered as evidence, Shri Devender Kumar Sharma details that the claimant was appointed against a special recruitment drive for Ladakh region in the State of Jammu & Kashmir. Recruitment was restricted to award staff for that region only. Claimant offered his services for Ladakh region pursuant to advertisement published, in that regard. He joined his services at Leh branch on 24.04.1990. He was half-hearted towards his duties and always remained in search of a chance to run away from Leh. Claimant remained absent, without any leave to his credit. He made a representation to the bank claiming that he was suffering from allergic bronchitis and sought transfer to Jhansi, where his spouse was working. He exerted pressure on the bank through Shri Sachidanand, Member of Parliament. Opinion of the Chief Medical Officer of the bank was sought, who opined that allergic bronchitis does not incapacitate the claimant to render services at Leh.

35. Facts unfolded by the claimant and Shri Devender Kumar Sharma are to be appreciated in the light of the documents proved by the parties. As emerge out of offer letter Ex.WW/3, post of clerk/typist at Leh branch of the bank was offered to the claimant. Claimant accepted that offer and joined at Leh branch on 22.04.1990. It is not a matter of dispute that conditions of service, detailed in Ex.WW1/3, were accepted by the claimant. Ex.WW1/3 brings it to light that the claimant was called upon to give an undertaking, in writing, to the effect that he was willing to be transferred to any branch in the Circle at any time and an application for transfer to any place of his choice shall not be entertained by the bank before completion of two years confirmed service. Claimant served the bank upto 29.04.1990. He absented himself in a unauthorized manner. He makes a candid admission that he was absent from his duties from 30.04.1990 to 26.10.1990. He joined his duties on 27.10.1990 and served the bank upto 30.04.1991. He sought leave for 15 days and left for his native place. Thereafter, he did not turn up to join duties and sent applications for leave, claiming himself to be suffering from nasal trouble, which made him unable to breathe properly. For the first time, on 28.09.1991, he wrote to the bank that he may be transferred to some branch in plains in Jammu region of the bank, which fact has been brought over the record through application Ex.WW1/20. Transfer applications started pouring in the bank thereafter, since the claimant presented that he was unable to work at high altitude branch at Leh. On 02.10.1993, the claimant sent application for transfer on the prescribed proforma, as emerge out of Ex.WW1/98, wherein he sought his transfer either to Jhansi, Babina or Kanpur branches of the bank. Another application on prescribed proforma was sent by the claimant on 11.04.1994 wherein request for transfer to Jhansi, Babina or Lucknow branches of the bank was made.

36. Before proceeding to appreciate facts detailed above, it would be expedient to know law relating to transfer of an employee from one place to another. It is well known that an employee in any concern is in the ordinary course of business liable to be transferred. No concern could possibly run if it has no right to transfer its employees from one branch to another. Transfer might cause some inconvenience but all employees are bound to suffer this inconvenience unless there is some stipulation in their conditions of service, which says that they will remain at a particular branch or place of business. This liability to be transferred is normal incidence of service in any concern and it does not necessarily involve punishment. Right to transfer an employee is implied right of the employer. No express term in the contract of service is necessary in that regard. Right to transfer an employee exists even in absence of a contract, unless there is a contract to the contrary. The implied right of the employer to transfer is available even where an employee is a probationer. In the absence of anything in the contract of service, general right of the employer to transfer an employee will remain. Even where there are standing orders, they do not lay down all service conditions and even when not mentioned in the standing orders, an employer has implied right to transfer an employee from one place to another. Circumstances that on previous occasions, transfers were only made with the consent of the employees does not debar an employer from ordering transfer in the interest of exigencies of business. When right of transfer was incorporated in the appointment letter, the employee is bound to obey the transfer orders issued by the employer.

37. Shastri Award stipulates that there shall ordinarily be no transfer of subordinate staff and if there is any transfer at all, it should not be beyond the language area of the person so transferred. It has further been detailed therein that even in case of workman not belonging to subordinate staff, as far as possible, there should be no transfer outside the State or language area in which the employee has been serving, except of course with his consent. In all cases, number of transfer to which a workman is subject should be strictly limited and normally it should not be more than once a year. Ordinarily, an employee agrees to serve an employer at a particular station. It may be possible to imply right of employer to transfer his employee to another branch when the transfer was ordinary incidence to the employment.

38. In Alexandera Banzouron (AIR 1930 PC 119), a bank employee, who refused to abide by the transfer order from one branch to another, was dismissed for disobedience.

Before the Judicial Committee, his plea was that in terms of his contract of service, he was not liable to be transferred to other branches of the bank. It was found that transfer was one of the ordinary incidence of conditions of his service and the Judicial Committee observed that from the point of view of proper organization of their staff, it is difficult to assume that the bank would willingly agree that its employees should not be bound to serve outside a place where the contract was made, except with their consent and in their Lordship's opinion, such conditions of contract would require to be clearly established, which in their opinion was not established in that case.

39. In Kundan Sugar Mills [1960(1) LLJ 266], the Apex Court ruled that there was liability of being transferred as an implied obligation of an employee. In Dewan Sugar & General Mills Ltd. [1954 (1) LLJ 36], the Labour Appellate Tribunal ruled that an employee is bond to suffer inconvenience of transfer unless there is some stipulation in his conditions of service that he will remain stationary at one place. Principles of law were stated in the following words:

> "Unless in a particular case it is shown that the management have entered into special agreement whereby they have bound themselves to keep the employees at a particular branch of their business, which is in our view, an ordinary incidence of conditions of service of the workman that he should be liable for transfer to other branches of the concern operating in other centres. Unless the management is free to exercise this right, it may not always be possible or convenient for it to carry on its business properly. It must, however, be remembered that the management for effecting transfer of workmen from one place to another is to act bonafide and in the interest of its business".

40. Liability to be transferred from one place to another by the employer necessarily implies two things, namely, (i) it can be only taken away or curtailed or regulated in express terms, and (ii) that the power is only in the employer, which means that only the employer or a person either expressly authorized by him or one who can be said to have that authority impliedly can exercise that power. Whether an employee can claim transfer on the grounds of some inconvenience, domestic difficulties or health conditions? For an answer to this proposition, contract of service of the employee is to be looked into, with a view to ascertain whether such right was available to the employee. In case employer had recognized such right in favour of his employee, even in that situation, the employer is to see the exigencies of his business before granting such right. Employer is to see that its man power has been distributed in accordance with the needs of the branches being run to carry on the business. It will also be taken note of that in case request of one employee is accepted, situation may prompt others to make request for their transfers too. Exigencies of business, administrative reasons, public interest and maintenance of work culture in the concern are factors which an employer has to judge. The employer has to consider propriety, necessity or desirability of request of transfer, made by the employee. If request for transfer, made by an employee, is prompted by extraneous consideration then subsequent circumstances, which may come to his rescue, would not justify his request for transfer. It would be expedient to note that when request of transfer was put forth, employee projected his aptitude for work, his past conduct has been good and his efficiency was found to be satisfactory. In case he was found to be an unwilling worker at the place from where he seeks transfer, his request would found to be persuaded by extraneous considerations, which may put a blot on genuineness of the request made.

41. As noted above, Shastri Award stipulates that the banks should not transfer workman outside the State or language area in which he has been working, except with his consent. Number of transfers to which a workman can be subjected have been strictly limited to not more than once in a year. Limitation on number of transfers was imbibed therein with a view to reduce the difficulty of shifting people from one place to another. The bank, in its 15th meeting of Joint Consultation Committee held on 24.09.1970 agreed that save for special cases warranted by administrative exigencies, transfer from branches with surplus staff to the branches where vacancies exist may generally be effected on following basis: (a) where needs of the branch are such that an experienced employee is required, say for opening of new branches or for a branch which requires senior employees and does not have an employee with atleast three years service, junior-most employee with three years service or more may be transferred, (b) if there are employees with the same length of service, procedure which is valid for entrusting officiating powers in similar situation should be followed. Person who is junior-most, in terms of principles laid down for determination of seniority for the purpose of officiating in respect of employees of same seniority, will be transferred.

42. Transfer policy regarding deployment of staff was formulated by the bank wherein it has been incorporated that the bank in its discretion will determine number of employees to be re-deployed/transferred from a branch/office/center to another branch/office or location at the same centre. Redeployment/transfer of employees from a branch/office within the center will be on the basis of length of stay at the branch/office and will be made on the principles of 'first come first go', i.e. longest to stay at a branch/office will be transferred/redeployed first. Such a condition for local transfer will be confined to locality within the centre, such redeployment may be between branches/offices/location within the control of Assistant

General Manager of a region or from one region to another or from region to branch/office/location within the control of another Assistant General Manager and General Managers controlled branch/office/ location to Head Office and Central Office, establishment etc. and vice versa. With a view to facilitating such transfer/redeployment, branch-wise/record-wise list of staff (both clerical as well as subordinate staff) will be prepared and updated every year on 1st of August and names of employees will be arranged in descending order of the length of stay at the branch/office. The above list will be prepared by each branch/office, including Zonal Office, Local Head Office, Learning Centres and Central Office establishments located at the Center. Concerned controllers of the branches or offices will be responsible for preparation and accuracy of the list. Transfers will be effected jointly by the Assistant General Managers and/or controllers under whose control the transferor and the transferee branches/offices function. The bank further stipulates in the policy that an attempt to bring any political or other outside influence for seeking transfer from one place to another would amount to misconduct, which would make an employee liable for appropriate disciplinary action.

43. Turning to facts, claimant joined at Leh branch of the bank on 22.04.1990. He served there till 29.04.1990. Thereafter, he absented himself in an unauthorized manner upto 26.10.1990. However, he was allowed to join duties by the bank on 27.10.1990 and his services were confirmed on 27.04.1991. He got leave for 15 days sanctioned and left for his native place at Jhansi on 30.04.1991. In a short span of one year, claimant remained absent for a period of six months. Thereafter, he absented himself in an unauthorized manner and opted not to join his duties till the date when he was deemed to have voluntarily abandoned his service. While leaving for his native place, he was hale and hearty, as emerge out of affidavit Ex.WW1/A, wherein he claims that he fell ill at Jhansi, which reason incapacitated him from joining his duties. These facts bring it to light that the claimant was an unwilling worker. He never intended to serve the bank at Leh branch, except for confirmation of his services by the bank.

44. Ex.WW1/3 stipulates that he was required to give an undertaking that he would be willing to accept his transfer to any branch in the Circle at any time and his application for transfer to a place of his choice shall not be entertained by the bank before completion of two years of confirmed service. Thus, terms of his service, contained in Ex.WW1/3, bring it to light that till completion of two years confirmed service, the claimant cannot request his employer to entertain an application for transfer to a place of his choice. Memorandum of Settlement arrived at on 19.10.1966 stipulates that an award staff shall be entitled to privilege leave on substantive pay for one month on completion of 11 months service in the bank. As detailed above, claimant had only completed six months service to the bank and 15 days leaves were sanctioned in his favour. Thereafter, there were no leaves of any kind to his credit. His absence from duty, with effect from 30.04.1991 till the date when he was deemed to have abandoned his services can never be termed as service rendered by him. Resultantly, it is clear that the claimant had not rendered two years confirmed service with the bank till date. In such a situation, applications for transfer, moved by the claimant, were in contravention to conditions of service, governing him.

45. Admittedly his transfer applications were not granted by the bank. Whether rejection of his transfer application could be treated as grievance with which the claimant suffered? In its circulars, the bank had detailed grievances, redressal of which can be sought by award staff, which grievances are defined as follows:

(i) Complaints relating to unfair treatment or wrongful exaction on the part of any superior official.

(ii) Complaints affecting one or more individual workers regarding wage payment, overtime, leave, order of transfer, seniority, working assignment, working conditions and rights and privileges of employees under prescribed terms and conditions of service.

46. Grievances in respect of order of transfer can be sought to be redressed only if orders are complained against on the grounds of victimization, perversity or malafide of superior officials but not on grounds of rejection of requests for deferment or cancellation of transfer order on the grounds of compassion or individual or family inconvenience alone. Initially a complaint in respect of grievance is to be made in writing on the prescribed form by the concerned employee and put up to the initial authority in respect of departments or the branch, in which an employee is working, either directly or through the recognized unions. The initial authority for this purpose is defined by Local Head Office at every Circle, having regard to the nature or size of the office where the employee is working. The initial authority should investigate the matter, giving fair opportunity to the complainant to adduce evidence and establish his case and give his decision on the complaint in writing within seven working days of its receipt.

47. As noted above, non-passing of an order of transfer may amount to a grievance. The claimant nowhere projects that he made a complaint in respect of the grievance to the initial authority, for investigation of the same. When he has not made out a grievance, there arose no occasion for the claimant to make an appeal to the Appellate Authority designate by Local Head office in that regard. No case could be projected by him for making reference of his grievance to the Grievance Committee. Thus, it is evident that the claimant could not make out a case that he raised a grievance when his transfer was not effected and it was

not investigated by the initial authority, not to talk of raising an appeal before the Appellate Authority or making a reference to the Grievance Committee, constituted by the bank. Resultantly, it is crystal clear that the claimant opted not to avail the procedure for redressal of his grievance, when his request for transfer to a place of his choice was not conceded to by the bank.

48. Whether inaction on the part of the bank in not passing order on his request for transfer, would amount to his victimization or malafide of the bank in that regard? At the cost of repetition, it is pointed out that the claimant had not rendered confirmed service of two years before making a request for his transfer from Leh branch to some other branch of his choice. He opted not to join his duties when his sanctioned leave for 15 days came to an end in May 1991. Till the bank took drastic action in March 1996 of forming an opinion and passing an order that the claimant is deemed to have abandoned his service, the claimant never went to Leh branch to assume his duties. His thrust of contention had been that he fell ill on account of hard weather faced by him at Leh, which is located at high altitude of 12000 feet above sea level. However, he nowhere projects that he fell ill while being in Leh. His case has been that he fell ill after reaching his native place at Jhansi, Uttar Pradesh. Medical certificates, placed over the record, highlight that initially the claimant was suffering from rhinitis, subsequently with allergic rhinitis and thereafter with allergic bronchitis. Allergic rhinitis or bronchitis is a disease of pollution, or pollution is mainly responsible for this disease. Leh is not near any coal field. Neither air pollution nor water pollution nor environmental pollution exists at Leh. Admittedly, Leh is located at a very high altitude, where less oxygen is there in the air. Less oxygen in the air may result in respiratory problem. However, while at Leh, claimant had not developed any such problem. Therefore, it does not lie in his mouth that he fell ill on account of hard weather faced by him at Leh.

49. As per case of the claimant, he fell ill at Jhansi, Uttar Pradesh. He might have developed allergy, when he came in contract to some allergen. He was supposed to keep himself away from the allergen, which was responsible for allergic rhinitis or allergic bronchitis. Instead of keeping himself away from that allergen, the claimant remained in Jhansi and his problem aggravated. Therefore, it cannot be said that on account of his posting at height altitude, he fell ill, which illness incapacitated him in performance of his duties.

50. Claimant conceded that in April 1990, there were 25-30 employees working in Leh branch of the bank. Out of those employees 10-12 were locals. He feigned ignorance that except local employees, other employees wanted their transfer(s) to a place of their choice. In case the bank would have considered request of transfer, made by the claimant, without rendering two years confirmed service at Leh branch, then all other employees would have been prompted to make such a request. Furthermore, it would have become difficult for the bank to have sufficient manpower to run its Leh branch. These factors bring it over the record that refusal of request of transfer by the bank was neither prompted by any act which may amount to unfair labor practice or victimization of the claimant.

51. In Leh Region, the bank was running branches at Udhampur, Leh, Kargil, Banihal, Patote, Garhi, Ramban, Ram Nagar, Doda, Chinar, Thatri, Ghogalansar, Udrana, Kistwar, Kumbadhkang, Assar, Fire & Fury, Mastlang, Ramsu, Drass, Kud, Shakar, Pancheri, Trishul, Saspol, Shargola, Khellani, Seri and Bhalara. Udhampur branch of the bank is not at a very high altitude, where the claimant would have been subjected to very difficult season. He had not requested the Regional Manager, Leh, for his transfer to Udhampur branch of the bank. Initially, he claimed for his transfer to Jammu Region of the bank, which request could have been considered by the Circle Head only on completion of two years of confirmed service. Therefore, one may comment that the claimant was attempting to seek change of his region so that he may not be called upon to work in Leh Region any more. Evidently, such steps were taken by the claimant to seek his transfer to a place of his choice so that he may reach near Jhansi, his native place. Demands made by the claimant were not in consonance with his service conditions. Physical incapacity, if any, suffered by the claimant, was not on account of tough weather at Leh but on account of allergy which he contacted at Jhansi, Uttar Pradesh. In such a satiation, I do not find any justification in the request of transfer made by the claimant.

52. Shri Devender Kumar Sharma unfolds that the claimant exerted pressure on the bank for his transfer through Shri Sachidanand, Member of Parliament. As pointed out above, such an act amounts to misconduct, under service conditions applicable to him. The bank had not initiated any action in that regard. It has further been brought over the record by Shri Sharma that the Chief Medical Officer of the bank opined that allergic rhinitis/ bronchitis would not incapacitate the claimant to render his services at Leh. There is no denial of these facts. These factors further give reaffirmation to the proposition that the claimant was bent upon to seek his transfer, no matter he violates service conditions and commits a misconduct. One who violates rules of service cannot seek equity from his employer. These reasons make me to comment that act of the bank, in not transferring the claimant from Leh, is neither unjustified nor illegal. The bank was within its right when request for transfer made by the claimant was not considered. Issue referred by the appropriate Government in that regard is answered in favour of the bank and against the claimant.

53. As conceded by the claimant in his testimony, he had not joined his services after 30.04.1991. He further concedes that notice Ex.WW1/M1 was served upon him. He does not dispute that notice Ex.WW1/M2 was served upon him. He presents that notice was replied by him, vide Ex.WW1/179. However, he admits that no documentary proof has been placed before the Tribunal to substantiate that Ex.WW1/179 was transmitted by him to the bank. He had made no denial that notice Ex.WW1/M3 was served upon him. It is also not disputed by him that Ex.WW1/M4 was received by him. He admits that letters Ex.WW1/M5 to Ex.WW1/13 were received by him.

54. Above facts highlight that the claimant opted not to report for his duties despite various letters and notices sent by the bank. His overstayal of sanctioned leaves for such a long period made the bank to assume that he had voluntarily abandoned his services. Settlement dated 14.04.1989(commonly known as V Bipartite settlement) projects that when an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/ subsequently or when there is satisfactory evidence that he has taken up employment in India or when the bank is reasonably satisfied that he has no intention to join duties, the bank may at any time thereafter give notice calling upon him to report for duty within 30 days of the notice and on his failure to report for duty, the employee would be deemed to have voluntarily retired from bank's services on expiry of the said notice. For the sake of convenience, provisions of V Bipartite settlement are extracted thus:

> " XVII Voluntary Cessation of Employment by the Employees.
>
> The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following :
>
> (a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.
>
> (b) Where an employee goes abroad and absents himself for a period of 150 or more consecutive days without submitting any application for leave, or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.
>
> (c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment".

55. Thus, it is evident that overstayal of sanctioned leave may be treated as voluntary abandonment of service. Therefore, question would be as to under what circumstances overstayal would be considered as voluntary abandonment of services? Such proposition was raised before the Apex Court in Jeevan Lal(1961(2) FLR 537) wherein the Court was called upon to construe as to what continuous absence in the context of gratuity scheme would mean. It was ruled therein that if an employee continues to be absent from duty without obtaining leave and in an unauthorized manner for such a long period of time, then inference may reasonably be drawn from such long absence that by his absence he is absenting from service and long unauthorized absence may ultimately be held to cause break in continuity of service. It was also observed therein that it was always to be question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity in service for the requisite period or not. The case where long unauthorized absence gives rise to an inference that such service is intended to be abandoned by the employee is of course different.

56. In Shahoodul Haq (AIR 1974 SC 1986) the Apex Court laid down law to the same effect. It would be expedient to reproduce the observations made by the Apex Court, which are detailed as under:

> "The undenied and undeniable fact that the appellant had actually abandoned his post or duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him. It would only prolong his agony. On the view we have adopted on the facts of this case, it is not necessary to consider the further question whether any notice for termination of services was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us."

57. In Venkatiah (1963(7) FLR 343), the Apex Court was dealing with the same proposition. Observations made therein are relevant for consideration, which are reproduced thus:

> "It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf".

58. In Syndicate Bank (2000 (85) FLR 807) and Manzur Ali Khan (2001(91) FLR 28), sharing the same view it was announced that if a person absents himself beyond the prescribed period for such leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. It was concluded therein that in such cases, there was no need to hold an enquiry or to give any notice as it would amount to useless formalities.

59. In the light of the above proposition of law, it would be expedient to know what the words 'abandon' and 'abandonment' mean? Ordinarily, the word 'abandon' does not mean 'merely leave' but 'leaving completely and finally. Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment or extinguishment of a right, giving up of something absolutely, giving up with an intent of never claiming a right or interest, to renounce or forsake utterly. In order to constitute an "abandonment" there must be a total or complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

60. Abandonment is a voluntary positive Act. A man must expressly say that he gives up his right. If he remains quiet, it cannot be said that he is forsaking his title to property or his interest therein. An office is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandonment of an office. A mere absence of a workman from duty cannot be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention cannot be attributed to an employee without adequate evidence is that behalf. However, the "intention" may be inferred from the acts and conduct of the party. The question as to whether the job, in fact has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case.

61. Whether the bank had followed requisite procedure provided by Clause XVII of the V Bipartite Settlement ? At the cost of repetition, it is said that when an employee absents himself from work for a period of 90 days or more consecutive days: (i) without submitting any application for leave; or (ii) application for extension of leave; or (iii) without any leave to his credit; or (iv) beyond period of leave sanctioned originally/subsequently; or (v) when there is satisfactory evidence that he has taken up employment in India; or (vi) when the bank is reasonably satisfied that he has no intention of joining duties, the

bank may at any time thereafter give notice to him at his last known address calling upon him to report for duty within 30 days of the notice stating the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. It is evident that the employer shall serve a notice on the employee calling upon him to join his duties within 30 days of the notice. The employer is obliged to state the grounds for coming to the conclusion that the employee has no intention of joining duties. It is also to be detailed in the notice that in case of his failure to report for duty within 30 days of the notice or offer on explanation for his absence, and expression of intention of joining duties, he shall be deemed to have voluntarily retired from bank's service on expiry of the said notice. When contents of notice dated 23.03.1996 are perused, it is clear that the bank detailed that the claimant had absented himself from duty since 30.04.1991 unauthorizedly, which position was in contravention of service rules applicable to him. Spell of his long unauthorized absence, made his intention of not joining duties apparent and well known. He absented himself from reporting for his duties for a period of 90 or more consecutive days without any extension of leave. Time and again, the bank wrote to him calling upon him to report for duties, but to no avail. In letter dated 23.03.1996, it was emphasized by the bank that his absence was highly irregular and in contravention of the service rules. Therefore, it is evident that in the notice sent to the claimant, the bank detailed grounds for coming to conclusion that he had no intention of joining his duties. 30 days' time was given to the claimant to report for his duty, but he had not availed that opportunity. Consequently, it is evident that all requirements detailed in Clause XVII of the V Bipartite settlement stood satisfied. The claimant voluntarily abandoned his services.

62. There are circumstances which give reaffirmation to these facts. The bank informed the claimant vide letter dated 23.03.1996 that he is deemed to have voluntarily abandoned his service with effect from 30.04.91. Despite that he did not come out of slumbers. That fact bring his intention to abandon his services over the record. These circumstances make it evident that he had no intention to join and abandoned job voluntarily.

63. Whether the bank was enjoined with a duty to initiate enquiry against the claimant for his unauthorized absence, before invoking provisions of clause 17 of 5th Bipartite Settlement ? In Suresh Chand (2007 LLR 344) contention of the workman that no domestic enquiry was conducted and termination of his services was illegal, was brushed aside and it was ruled that when a workman absents from duty without any intimation or prior permission, termination of his services without holding an enquiry will be justified. In Vijay Pal (2007 L.L.R.7) and G.T.Lad (1979 Lab.I.C. 2910) same proposition of law were laid. In Syndicate Bank (AIR 2000 S.C. 2198) the Apex Court was confronted with such a proposition, as exists in the present controversy. Workman was absent from his work place for a period of 90 or more consecutive days. A notice was served upon him to report for duty within 30 days of notice along with the grounds on which bank came to the conclusion that the workman had no intention to join his duties. The workman did not respond to that notice at all. The bank passed orders to the effect that the workman had voluntarily retired from the service of the bank. The Apex Court laid that as far as principles of natural justice are concerned the Court was to consider: (1) whether show-cause notice detailing the note of complaint or accusation was served, (2) whether an opportunity was there for the workman to state his case, and (3) whether the management acted in good faith and has been fair, reasonable and just. It was ruled therein that on the facts and circumstances of the case the principles of natural justice were inbuilt in the clause relating to voluntary cessation of employment and when workman had not opted to join his duties on service of notice, principles of natural justice were complied with. The law laid by the Apex Court in the precedent referred above is applicable to the case of Shri Gupta. In view of these reasons it is concluded that Shri Gupta can not agitate that principles of natural justice were not followed when order impugned was passed by the bank. On these count too, Shri Gupta has no case for intereference by this Tribunal. Resultantly issues, referred in the reference order, are answered in favour of the bank and against the claimant.

Relief.

64. In view of reasons detailed above, I find action of the bank in treating Shri Gupta deemed to have voluntarily abandoned his service as just, fair and legal. He is not entitled to any relief. His claim is brushed aside. An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to appropriate Government for publication.

Dated : 27--02-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1144.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/90/94-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/1999) of the Central Government Industrial Tribunal-Cum-Labour Court, Nagpur, as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 14/03/2014.

[No. L-12012/90/94-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/27/1999 Date: 20.02.2014.

Party No. 1 : The Regional Manager,
Bank of India, Chandrapur,
Regional Office, 13 Mul Road,
Chandrapur. (MS).

Versus

Party No. 2 : The Regional Secretary,
B.O.I. Workers Organisation,
"OM Niwas" Laxmi Nagar,
Wadgaon Road,
Chandrapur- 442 401.

AWARD

(Dated: 20th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri D. N. Punekar, to the CGIT-Cum-Labour Court, Jabalpur for adjudication, as per letter No.L-12012/90/94-IR (B-II) dated 26.08.1994, with the following schedule:-

> "Whether the action of the management of Bank of India, Chandrapur in terminating the services of Shri D. N. Punekar, Sepoy w.e.f. 11.07.1993 is justified? If not, what relief is the said workman entitled to?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Bank of India Workers Organisation", ("the union" in short) filed the statement of claim on behalf of the workman Shri D.N. Punekar, ("the workman" in short) and the management of Bank of India, ("party no.1" in short) filed the written statement.

The case of the workman by the union in the statement of claim is that the party no.1 is a Nationalized Bank and it (the union) is a registered trade union under the Trade Unions Act, 1926 and the service conditions of the employees of the Nationalised Banks are governed by the provisions of the Sastry Award, Desai Award and Bipartite Settlements, signed under the Act and the workman is a member of the union and upon the requirement of the party no.1, the name of the workman was sponsored by the Employment Exchange and he was interviewed by the Bank officials and after completing the necessary formalities, the workman was selected for the post of sub-staff (sepoy) and he came to be appointed at Bamhni branch in the year 1990 and his services were terminated w.e.f. 11.07.1993 and from the date of his appointment till the date of his termination from services, the workman was required to perform all the duties of permanent sub-staff working in the bank for full day, but no appointment order was given to him with malafide intention by party no.1 and his name was also not shown on the muster roll of Bamhni Branch and he was paid less salary than what was provided in the Bipartite Settlement and no holiday or Sundays were given in a sense, no payment for the holidays and Sundays was made to him and the workman worked for 15 days, 228 days, 225 days and 127 days in the years 1990, 1991, 1992 and up to 10.07.1993 respectively and the vacancy, in which his appointment was made was of permanent nature and after the termination of the services of the workman, persons juniors to him in service were continued or reappointed by party no.1 and since, the appointment of the workman was against vacancy of permanent nature, automatically he got the status of permanent employee within the provisions of Bipartite Settlement and he was deemed to have been confirmed in the services of party no.1, after six months, from the date of his appointment and the termination of the workman was illegal, as no notice as required under the law was given to him and neither any charge sheet was submitted nor any departmental enquiry was conducted against him and as the workman had worked for more than 240 days continuously preceding the date of termination and as the provisions of Section 25-F of the Act were not complied with, his termination amounted to retrenchment and as such, the termination of the workman from services was illegal and as juniors to the workman were appointed in service by party no.1, there was violation of the provisions of Sections 25-G and 25-H of the Act and the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was engaged purely on casual basis by the Bamhni Branch, whenever the regular sepoy of the branch was remaining on leave and the same was done to enable the bank to give minimum service to its

customers and the name of the workman was sponsored by the Employment Exchange for selection of persons to be engaged on casual basis and was not for appointment on permanent or regular basis and no such indent was given by it and for appointment of persons in sub-staff cadre on regular basis, an indent to that effect is required to be sent to the Employment Exchange and the Employment Exchange accordingly is required to sponsor the candidates for such selection and the engagement of the workman from time to time on casual basis was dependent upon the existence of any leave vacancy or temporary increase in work of the branch and the workman was never appointed on regular basis at any time and his engagement was always coming to an end automatically on cessation of the leave vacancy or temporary increase in work and there was never any termination of the services of the workman and a person working in the leave vacancy is required to do all the duties of the regular employee and as such, performance of duties of a regular/permanent sub-staff by the workman is wholly irrelevant.

The party no.1 has admitted the claim of the workman about the number of days of his engagement as claimed in paragraph 5 (b) of the statement of claim. It is further pleaded by the party no.1 that as the engagement of the workman was on casual basis and his non-engagement was not based on misconduct, there was no necessity of submitting charge sheet or departmental enquiry and there is usually a panel of persons, who are required to be engaged, whenever such contingency arises, depending upon the availability of such person on that particular day and there is as such, no question of persons on such panel being either senior or junior to each other and the provisions made in the first bipartite settlement, particularly para 20.7 permits the Bank to engage the services of temporary casual sepoy in the leave vacancies of regular sub-staff and as such, its action was wholly within the frame work of law and is legal and justified and the workman did not work for 240 days preceding the date of his termination and the provisions of Sections 25-B and 25-F are not applicable to the case of the workman, since his each engagement was casual and the same was coming to an end, with the end of the contingency and the provisions of Section 25-G and 25-H of the Act are not attracted and the workman is not entitled to any relief.

4. In support of the claim, five witnesses including the workman have been examined by the union, besides placing reliance on the documentary evidence. The witnesses examined by the workman are (1). Shri Digambar Namdeo Punekar (the workman), (2). Shri Vinayak Joshi, (3). Shri Shirish A. Damle, (4). Shri Arvind M. Tamhaney and (5). Shri Rajendra M. Dahikar.

One Shri Laxmichand S. Kharole has been examined as the only witness on behalf of the Party No. 1.

5. At the time of argument, it was submitted by the representative for the Party No. 1 that the workman was engaged on purely casual basis temporally and his engagement was as and when required basis, due to taking of leave by the permanent Sub-staff or temporary increase of work load in the branch and the workman did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the evidence on affidavits of the witnesses examined by the union are general affidavits and no reliance can be placed on the same, as no document has been produced by the workman to demonstrate that he had worked for 240 days in the preceding 12 months of the alleged date of termination and the workman has failed to discharge the burden of proving that in fact he had worked for 240 days in the preceding 12 months of the date of termination, so the provisions of the Act are not applicable and the workman is not entitled to any relief.

In support of the submissions, reliance was placed by Party No. 1 on the decisions reported in AIR 2004 SC – 4791 (M.P. Electricity Board Vs. Hariram), (2006) 1 SCC – 106 (R.M. Yellatti Vs Asstt. Executive Engineer), (2006) 9 SCC – 697 (Krishna Bhagya Jal Nigam Ltd. Vs. Mohd. Raffi), (2006) 9 SCC – 132 (Surendra Nagar District Paanchayat Vs. Gangaben), Writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC – 221 (Reserve Bank of India Vs. Gopinath Sharma) and AIR 2006 S C – 839 (Regional Manager, SBI Vs. Rakesh Kumar).

It is to be mentioned here that no argument as advanced by the union.

6. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental there to.

7. Though the reference has been made by the Central Government for adjudication of the legality or otherwise of the termination of the workman, the union, in the guise of raising the dispute on behalf the workman has tried to challenge the policy adopted by the party no.1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

8. Moreover, from the materials on record including the pleadings of the parties, it is found that the engagement of the workman in this case as sepoy was not against any

permanent vacancy in the branch, but his engagement was on temporary basis as a daily wager, as and when required basis against leave vacancy of the permanent sub-staff or due to temporary increase of workload in the branch.

9. At this juncture, I think it necessary to mention the principles enunciated by the Hon,ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court have held that:-

> " Labour Law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

10. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnatak Vs. Umadevi & others)(Constitutional Bench).

It is said decision, the Hon'ble Apex Court have held that:-

> "Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/ operated corporations-Appointment-Modes of appointment – Held regularization cannot be a mode of appointment- Public Sector- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law- Appointment-Mode of appointment-Held, regularization cannot be a mode of appointment- Regularization- Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that:

"The term 'temporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:-

> "Employment on daily wage – Confers no right of permanent employment- Daily wager appointed on less than minimum wages – Not forced labour – Continued on post for long period – Daily wagers from a class by themselves – They cannot claim parity visa-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

11. On perusal of the materials on record including the pleadings of the parties and taking into consideration the submissions made during the course of argument by the party No.1, it is found that the workman was engaged as a Sepoy on daily wages basis at Bamhni Branch and he worked in the said branch intermittently in the leave vacancy of permanent Sub-staff or when there was temporary increase of work in the branch. The appointment of the workman was not against any permanent post. It is clear from the record that the appointment of the workman was not in accordance with the of the Rules of recruitment of Party No. 1. It is also clear from the pleadings of the party No.1 that the workman

worked for 240 days in the preceding 12 calendar months of the alleged date of termination i.e. 11 07.1993. To avail the benefits of Section 25-F of the Act, it is necessary to show that infact the workman had worked for 240 days in the preceding 12 months of the date of termination. As admittedly, the workman worked for 240 days in the preceding 12 months of the date of termination, it was necessary for Party No. 1 to comply with the provisions of Section 25-F of the Act. As the mandatory provisions of section 25-F of the Act were not complied with, the termination of the services of the workman is illegal.

12. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajsthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty)and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in1990. It is also found that he continued as such till 10.07.1993, when he was terminated from services by party no.1. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 45,000/- (Rupees forty Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Bank of India, Chandrapur in terminating services of Sri D.N. Punekar, Sepoy w.e.f. 11-07-1993 is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 45,000/- (Rupees Forty five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 45,000/- to the workman Shri D.N.Punekar within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 554/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-03-2014 को प्राप्त हुआ था।

[सं. एल-12012/32/2001-आईआर (बी-II)]

रवि कुमर, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 554/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 25-03-2014.

[No. L-12012/32/2001-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No.554/2005

Registered on 23.8.2005

Sh. Lokesh Kumar,
C/o Sh. H. Ghai,
K.No. 2158, Sector 38C, Chandigarh. .....Petitioner

Versus

UCO Bank,
The Divisional Manager,
UCO Bank, Sector 17B, Chandigarh .....Respondent

APPEARANCES

For the workman : Sh. Tek Chand Sharma

For the Management : Sh. N.K. Zakhmi

AWARD

(Passed on 19.2.2014)

Central Government *vide* Notification No. L-12012/32/2001/IR(B-II) Dated 8/13.6.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of UCO Bank in terminating the service to Sh. Lokesh Kumar is just and legal? If not, what relief the workman is entitled to and from which date?"

In response to the notice the workman appeared and filed statement of claim pleading that he was appointed as Clerk with the respondent bank on compassionate grounds and he did his duty honestly and efficiently. The respondent management *vide* order dated 21.3.1995 served a charge sheet on him to which he submitted reply. Thereafter *vide* order dated 26.4.1995 an Inquiry Officer as well as Presenting Officer was appointed. After completing the inquiry, the Inquiry Officer submitted a report. On its basis his services were terminated. The appeal preferred by him was also dismissed. He had challenged his dismissal order on the ground that the inquiry conducted is not fair and proper. That the Inquiry Officer and the Presenting Officer were senior to him and he was not told about the assistance of a co-worker and had no legal knowledge. That the charge-sheet served on him was vague which was drawn on a pre-determined conclusion and the Inquiry Officer conducted the inquiry against the settled principles of rules and regulations and he has not been given opportunity of being heard and to present his case to the Inquiry Officer. That the Inquiry Officer and the Branch Manager pressurized him to admit the charges on the assurance that a lenient view would be taken. That he is a victim of double jeopardy as he was compelled to deposit the amount and on the other hand his services were terminated. That his termination on the basis of improper inquiry is liable to be set aside.

Respondent management filed written statement pleading that workman made fraudulent withdrawals of sum of Rs.85000/- as mentioned below :-

Sr. No.	Date	Amount	A/C No.	A/C Holder
1.	30.11.91	Rs.10,000/-	S/B a/c 3356	S.K. Saxena
2.	29.1.92	Rs.10,000/-	S/B a/c 1724	P.S. Chauhan
3.	3.3.92	Rs.15,000/-	S/B a/c 1724	-do-
4.	29.4.92	Rs.10,000/-	S/B a/c 1724	-do-
5.	29.5.92	Rs.10,000/-	S/B a/c 1724	-do-
6.	6.7.92	Rs.10,000/-	S/B a/c 1724	-do-
7.	29.7.92	Rs.20,000/-	S/B a/c 2035	Nachhatar Singh

On the basis of fake withdrawal slips he made confessional statement on 26.11.1994 and deposited the amount as follow:-

1.	26.11.1994	Rs.10000/-
2.	28.11.1994	Rs.05000/-
3.	02.12.1994	Rs.40000/-
4.	03.12.1994	Rs.30000/-
	Total	Rs.85000/-

Considering the gravity and misconduct, he was served with a charge-sheet to which he submitted reply and considering the same as not satisfactory, an inquiry was ordered by appointing an Inquiry Officer as well as Presenting Officer. During the course of inquiry the workman again made his confessional statement and accordingly the Inquiry Officer submitted the report that charges were proved against the workman. Acting on the report of the Inquiry Officer and serving a show-cause notice to the workman, his services are legally and validly terminated. There is no defect in the conduct of the inquiry. The appeal preferred by him was also dismissed.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set in the claim petition.

On the other hand the respondent bank has examined Sh. Prem Chand Gupta, Manager who filed his affidavit supporting the case of the respondent bank as set out in the written statement.

I have heard Sh. Tek Chand Sharma, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management and perused the file including the copy of the inquiry proceedings. The charge-sheet was served on the workman for fraudulent withdrawal of Rs.85000/- as reproduced above. He denied the charges. Thereafter inquiry was initiated by appointing an Inquiry Officer as well as Presenting Officer. The workman appeared before the Inquiry Officer on 19.5.1995 and sought adjournment for arranging his defence representative which was allowed. But he could not arrange the defence representative. He denied the charges before the Inquiry Officer. The case was fixed for recording the statements of the management witnesses on 5.10.1995 when 7 witnesses came present. Inquiry report further shows that on that day, the workman had shown his willingness to admit the charges and he was given time by the Inquiry Officer to rethink about his confession. But after sometime, he again appeared and admitted the charges and his statement was recorded. Relying on his confessional statement, charges were found proved against him. It cannot be said that he made confessional statement under the pressure of anyone. The Inquiry Officer has specifically gave him time to think over the matter before recording his statement. Workman cannot say that he was not been allowed to engage the co-worker as opportunity was afforded to him to bring his defence representative. It is not shown how any Rules

and Regulations were violated in the conduct of the inquiry. Acting on the inquiry report, the disciplinary authority awarded a punishment after serving a show cause notice and the appeal preferred by him was also dismissed. There is no illegality in the inquiry and the same is held to be fair and proper.

It was argued that charges pertained to the year 1991-92 and he was charge sheeted on 1995 i.e. after a considerable delay and he has deposited the alleged amount and therefore the punishment of removing him from service is highly excessive and is not justified.

This Court has the powers to award lesser punishment in lieu of dismissal, but this power is to be exercised in exceptional cases and that too warranted by the material on record. The workman was an employee of the bank. There is no denial of the fact that bank business survives on honesty. But the workman is guilty of fraudulently withdrawing sum of Rs.85000/- from the accounts of different account-holders and in the circumstances it cannot be said that the punishment awarded is to be interfered with. Thus, no reason is made out to award him lesser punishment.

In result, it is held that the action of the management in terminating the services of the workman is just and legal and the workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1146.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 142/94) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-03-2014 को प्राप्त हुआ था।

[सं. एल-12012/81/94-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 142/94) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 20-03-2014.

[No. L-12012/81/94-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/142/94

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Satish Kumar,
S/o Shri Bherulalji Solanki,
151/2, Hath Ki Chowki,
Near Marimata Mandir,
Ratlam .....Workman

Versus

The Branch Manager,
Syndicate Bank,
Ratlam ....Management

AWARD

(Passed on this 18th day of February, 2014)

1. As per letter dated 11-8-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/81/94- IR(B-2). The dispute under reference relates to:

> "Whether the action of the management of Syndicate Bank, Ratlam in terminating the services of Shri Satish Kumar, casual worker w.e.f. 18-11-92 is justified? If not, what relief is the said workman entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman Satish Kumar submitted Statement of claim at Page 5/1 to 5/9. The case of Ist party workman is that he was working as part time sweeper-cum- attendant in Syndicate Bank, Ratlam as per oral order of the Branch Manager. He had worked for two months as attendant. He was also working as part time sweeper for 3 months. That on 18-11-92, IInd party No.3 refused work to the workman. That he had received copy of the letter addressed to ALC, Bhopal expressing probabilities that workman was not verbally appointed. IInd party No.3 had informed that the payments made to the workman against non-banking work. Workman further submits that he received bonus for the year 1991, that payment by oral orders is not legal. Without giving one month's notice or pay in lieu of notice, his services were discontinued. That the Bank was paying salary under different rates. That IInd party No.2 addressed letter to Secretary, Human Rights Commission admitting that the workman worked as part time sweeper/ attendant. IInd party No.2 has illegally transferred Santosh from Ujjain to Ratlam Branch. Post of part time sweeper is filled by calling name from local Employment Exchange. The transfer of Santosh is illegal. IInd party No.2 deliberately transferred Santosh from Ujjain

to fill up the vacancy at Syndicate Bank, Ratlam which is without jurisdiction. The workman further submits that the Bank has flouted norms/ policy of Bank by transferring person from other place whereas this post is filled up locally which is non-transferable post. Workman further submits that he belongs to SC, he was appointed temporarily on daily wage basis from 31-7-91 by IInd party No.3. However he was working on the post of sweeper on daily wage basis. Workman further submits that public sector undertaking has to follow formalities in the matter of recruitment of employees. IInd party No.2,3 suppressed facts before ALC. No requisition was sent to the Local Employment Exchange. Act of IInd party No.2 is illegal. That he was not regularized in the vacant post. He was not paid equal pay for equal work. The Bank's recruitment policy cannot take away his right for regularization in vacant post. In conciliation proceeding, management's representative was not willing to settle the arbitration for his reinstatement. Above points are reiterated by workman extensively in Statement of claim. The oral order is illegal that IInd party violated Article 14 of constitution. On such ground, workman is praying to set-aside his order of oral termination and regularized his services and reinstate him.

3. IInd party filed Written Statement at Page 8/1 to 8/11. IInd party has denied claim of workman. It is submitted that workman was engaged as casual worker on temporary basis in 1991 by Branch Manager, Ratlam. That the workman claims that he was working from 31-7-91 till 4-12-91. His services were terminated from 18-11-92. It is submitted that workman was engaged by Branch Manager without authority. The branch had a panel of Badli part time sweeper for engaging him in service. One Hargovind was first empanelled in working in Ratlam Branch since 1988. He was working in leave vacancy of permanent part time sweeper. That workman was not empanelled candidate for temporary engagement. The Branch Manager flouted norms/ policy of Bank and transferred workman without approval of the Dy.General manager, temporarily appointed workman Satish is illegal. The payments were made to workman debiting general charges account. That there is no post of part time sweeper in the Bank. Workman was engaged as temporary sweeper in Ratlam Branch in 1991. The appointment is without approval of competent authority as such illegal. Workman is not entitled for regularization. The Branch Manager Mr. Naik did not give work to workman as he was not entitled to work as part time attendant. The workman was engaged for non-banking work. His appointment was unauthorised and illegal. That as per panel of temporary part time sweeper, Mr. Hargovind was to be given preference in temporary appointment as against Shri Satish kumar, workman. All other adverse contentions of workman are denied. IInd party prays for rejection of claim.

4. Workman has filed rejoinder at Page 15/1 to 15/3 reiterating his contentions in Statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Syndicate Bank, Ratlam in terminating the services of Shri Satish Kumar, casual worker w.e.f. 18-11-92 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed.

REASONS

6. Workman is challenging termination of his services by IInd party on multiple ground. His affidavit of evidence is filed. Workman has stated that he was orally engaged by Branch Manager Ratlam from 31-7-91 as casual labour/ part time sweeper. Suddenly he was discontinued from work. Other person from Ujjain was transferred in his place. That transfer of said employee is illegal and only motivated for termination of his service. He further states that the transfer of class-IV employee from one division to another is illegal. The candidates from Local Employment Exchange are not for engaged in his place. The payment of wages for non-banking work is legal. In his cross-examination, workman says he was orally engaged by Branch Manager Shri Arora. Shri K.C.Raikwar Branch manager had given written appointment letter for the period July to August 1991. Mr. Arora was promoted after three months. The post was not advertised. Mr. Arora had told him that his name would be called by Employment Exchange. That his work was found satisfactory by K.C.Raikwar, Branch Manager. Order of termination was not given to him. After his termination, Santosh was engaged in his place. However workman was unable to tell specific period and specific date of his working, the evidence of workman is not specific or cogent for how much period, he was working in the Bank. As per his pleadings, he was working in Bank from 31-7-91 to 4-12-91. Thus workman has not worked for more than 240 days. Workman is not covered under Section 25(b) of I.D.Act. The counsel for workman Shri R.K.Soni submitted written notes of argument. The working days of workman are stated to be 150 days. When workman has not completed 240 days continuous service, he is not covered under Section 25(B) of I.D.Act. The workman is not entitled to protection under Section 25-F of I.D.Act. Therefore discontinuation of workman cannot be said in violation of Section 25-F of I.D.Act. workman is not entitled to reinstatement or regularization in service. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Syndicate Bank, Ratlam in terminating the services of Shri Satish Kumar, casual worker w.e.f. 18-11-92 is proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1147.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 40/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/03/2014 को प्राप्त हुआ था।

[सं. एल-12011/27/2004-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 40/2004) of the Central Government Industrial Tribunal/Labour Court, Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 25/03/2014.

[No. L-12011/27/2004-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 40/2004

Registered on 30.11.2004

The President,
Central Bank of India Employees'
Union Haryana, 129, Lal Kurti,
Ambala Cantt (Haryana). .....Petitioner

Versus

The Regional Manager,
Central Bank of India,
106, Railway Road,
Ambala Cantt (Haryana). .....Respondents

APPEARANCES

For the workman : Ex parte.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

(Passed on- 19.2.2014)

Central Government vide Notification No. L-12011/27/2004 [IR(B-II)] Dated 31.5.2004, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Central Bank of India, Ambala Cantt in non-considering the pension option scheme opted by Sh. Nand Kishore, Employee No.22683 Staff at Ambala City office is legal and justified? If not, what relief the said workman is entitled to?"

In response to the notice the workman filed statement of claim pleading that he was appointed as Peon in the bank on 25.8.1970. He opted for pension as per Employees Pension Regulations 1995 which was accepted by the management vide letter dated 5.1.1996. But the management treated him as non-optee for pension which act is illegal and he be treated as optee for the Pension Scheme.

In its written statement, the management pleaded that pension option scheme was launched by the respondent bank in the year 1995 for its employees and every employee was to give its option in the prescribed proforma. That the workman did not opt for the option scheme and due to technical error a letter was issued which was later on rectified. Since the workman failed to opt for the scheme, he is not covered under the Pension Rules.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the statement of claim.

On the other hand, respondent management examined Sh. A.K. Batra who filed his affidavit reiterating the case of the respondent.

Workman was proceeded against ex parte vide order dated 20.3.2012.

I have heard Sh. N.K. Zakhmi counsel for the management.

It was argued by the learned counsel that pension scheme was launched by the respondent bank in the year 1995 and options were invited from its employees and workman failed to exercise the option.

Now, according to the workman he opted for the scheme and his option was duly acknowledged by the respondents. But later on, refused to consider him as pension optee.

Though the management has taken a stand that workman did not opt for the pension scheme, but its witness namely Sh. A.K. Batra admitted during cross-examination that workman opted for pension scheme and the Central Office acknowledged the application vide its letter Mark M2. A perusal of the said document shows that it was issued by the Pension Department acknowledging the receipt of application of workman for option to join the pension scheme. Later on letter dated 3.2.2000 Mark M4 was sent to the Branch Manager intimating that the option of the workman has not been received and was advised to send the same again who in turn sent the same vide letter dated 15.2.2000. Thus, the stand of the respondent-bank stands falsified from the statement of its witness and it stands proved on the file that workman gave option for the Pension Scheme and as such, is to be treated as pension optee and he is entitled to the benefits of the pension scheme.

Thus, in result the reference is answered that the action of the respondent management in not considering the pension option scheme of the workman is illegal and unjustified and the workman being pension optee is entitled to the benefits of the Pension Scheme. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1148.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 201/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-03-2014 को प्राप्त हुआ था।

[सं. एल-12012/93/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 201/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh, as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 25/03/2014.

[No. L-12012/93/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 201/2011

Registered on 5.7.2011

Sh. Suraj Parkash,
S/o Sh. Sukhdev Raj,
R/o H.No.35, CC,
Nanagal Township,
Nangal, Punjab. .....Petitioner

Versus

Chairman, Punjab National Bank,
Through Zonal Manager,
Zonal Office, Punjab National Bank,
The Mall, Shimla (HP). .....Respondents

APPEARANCES :

For the workman : Sh. O.P. Batra Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

Passed on- 10.2.2014

Central Government vide Notification No. L-12012/93/2010 IR(B-II)) Dated 6.6.2011, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the demand of Sh. Suraj Parkash S/o Sh. Sukhdev Raj, Ex-Chowkidar Punjab National Bank, Mehtabpur, Distt. Una (HP) against the Chairman, Punjab National Bank, The Mall, Shimla (HP) for reinstatement in service we.f. 15/10/1987 is just, valid and legal? What relief the workman is entitled for and what directions are necessary in the matter?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was registered with the Employment Exchange and when management sent requisition for appointment of Chowkidar, he was intimated by the Exchange for interview. He was selected and appointed as Chowkidar w.e.f. 15.2.1983 with the respondent bank at Mehtabpur, District Una. It is pleaded that the minimum qualification prescribed was 8th Class and there was no condition of maximum qualification, though he was matriculate at that time.

That on 22.6.1987 a charge-sheet was issued to him for not disclosing the fact of his education and he did not admit the charge. An Inquiry Officer was appointed who

was requested to summon the witness in defence and his request was not allowed. The inquiry conducted is illegal and unjustified. On the basis of the inquiry report, his services were terminated on 15.10.1987, which is illegal and unjustified. That the punishment awarded is disproportionate to the charges. The appeal preferred by him was dismissed. He also filed a civil suit which was dismissed and the revision preferred was withdrawn by him to file the present reference. That order of dismissal dated 15.10.1983 is illegal and he be reinstated in service.

Respondent management filed written statement pleading that as per Circular No.80/84, the qualification for appointment of a Peon for General Category is Middle Pass which further provides that the candidates who have passed 10th Class are not eligible for appointment as such. That the workman got the appointment by concealing the material fact and he actually passed the Matriculation examination under Roll No.625018 in the year 1980. The workman intentionally concealed the fact of his qualification even while giving the declaration on 15.2.1983. He was charge-sheeted and he admitted the charges while submitting his reply. He also admitted the charges before the Inquiry Officer who submitted a report which is legal and valid. He again admitted the charges while submitting reply to the show cause notice dated 1.9.1987 and he was guilty of misconduct and the disciplinary authority rightly passed the order dismissing him from service.

The workman filed his affidavit.

On the other hand Jeet Singh, Senior Manager of the respondent bank filed his affidavit along with documents.

I have heard Sh. O.P. Batra, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management.

The admitted facts are that the respondent bank issued a Circular No.80/84 (Annexure I) wherein educational qualifications are prescribed for recruitment of subordinate staff and it provides Middle Pass for General Category candidates. Clause 5 and 6 of the said Circular further read as follow :-

(v) The undertaking to be obtained from the subordinate staff at the time of their appointment, as laid down on management Dav. Department Circular No. 2 dated 20th April, 1972 has also been revised as under:-

> "I hereby declare that I have passed Middle examination from …….. School which is a Government recognized School/and have studied up to IX standard examination/and have studied up to X standard examination/class but have not passed final examination of X class.* I am fully aware that if it is found at any stage that I have suppressed material information regarding my education, I shall be disqualified and liable to be removed from bank's service."

(VI) It should be ensured that only such candidates are appointed in the subordinate cadre in Bank's service who have passed VIII class/standard examination irrespective of the fact that they have pursued their studies up to IX/X class. It is also reiterated that the candidates who have passed X class examination/matriculation examination are not eligible for appointment in the subordinate cadre.

The workman was appointed as Chowkidar w.e.f. 15.2.1983. He was charge-sheeted on the ground that he declared his qualification having passed 8th Class in the year 1978 from Punjab School Education Board and actually had passed Matriculation examination in March 1980 under Roll No.625018 and thus concealed the material information with regard to educational qualification while seeking an employment in the bank. He admitted the allegation to be correct in his reply (Annexure IV). Thereafter the Inquiry Officer was appointed and he admitted the charges to be correct in the proceedings dated 4.8.1987 and accordingly the Inquiry Officer submitted the report holding that charges are proved against him. Since the workman admitted the charges, he cannot urge now that inquiry was not fair and proper. Rather the learned counsel for the workman did not raise any argument regarding this fact. Therefore inquiry is held to be legal and valid.

The learned counsel for the workman has drawn my attention towards copy of the judgment in Civil Writ Petition No.10307 of 2009 dated June 30, 2010 titled Bank of Baroda Vs. Presiding Officer, Central Government Tribunal Chandigarh and another and submitted that in similar circumstances where the workman possessed higher qualification and was terminated by the management for concealment of facts, his termination was set aside by the Hon'ble High Court and since, the case of the present workman is similar to the said case, the termination order in the present case may also be set aside.

I have considered the contention of the learned counsel.

As stated above, as per Circular No.80/84 the qualification for recruitment of subordinate staff was only Middle Pass and it was specifically provided therein that the candidate who have passed Matriculation examination are not eligible for appointment. Thus, there was an express condition regarding the eligibility and the candidates who are only Middle Pass were to appear for the subordinate staff and the person having higher qualification i.e. even having passed Matriculation examination was not eligible for the appointment. There is no denial of the fact that on the day the workman was selected and appointed as chowkidar i.e. on 15.2.1983, he was matriculate having passed the exam in March 1980. He gave a specific declaration (Annexure III) dated 15.2.1983 that he passed his Middle Standard examination from Government High School and have not passed

Matriculation examination at the time of his appointment in the bank. He further declared that if any misrepresentation/falsification has been found in his declaration regarding his qualification, he shall be liable for disciplinary action including termination of his service. Thus at the time of joining the service he got the employment by misrepresenting his qualification, though, he was not qualified to be appointed as such and the bank was well within its rights to award the punishment terminating his services.

In Civil Writ Petition No.10307 of 2009, though the allegation was that the workman was matriculate but, it was found that he actually appeared for the examination but did not qualify the same and as such he remained only Middle Pass and in those circumstances when the workman was not found to be possessing higher qualification, his order of termination was set aside by the Hon'ble High Court. But in the present case it is an admitted fact that the workman was possessing higher qualification then required for appointment as a Peon and Circular No.80/84 specifically prohibits the appointment of a person who have passed Matric exam, as much as, the workman himself has given a declaration that he is only Middle Pass and if said statement is found to be false his services may be termination. Thus the ratio of the said case is not applicable to the facts of the present case.

The learned counsel for the workman has also drawn my attention towards Clause 19.5 of the Bipartite Settlement and submitted that if workman got the employment by misrepresentation the same would not amount to 'misconduct' as defined in the said provision. Suffice to say that the provisions of Clause 19.5 are applicable when an employee commit certain act while performing his duties but in the present case the workman got employment by misrepresentation of facts and therefore the act of the management cannot be termed as illegal.

In result, it is held that demand of the workman is not valid and legal and he is not entitled to any relief and the reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 25 मार्च, 2014

का.आ. 1149.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संख्या 133/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/03/2014 को प्राप्त हुआ था।

[सं. एल-12011/80/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th March, 2014

S.O. 1149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 133/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, received by the Central Government on 25/03/2014.

[No. L-12011/80/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No.133/2013

The General Secretary,
Punjab National Bank Employees Union,
Parwana Bhawan, 44824/24, Ansari Road,
Daryaganj, New Delhi. .....Workman

Versus

The Chief Manager,
Punjab National Bank,
No.7, Bhikaji Cama Place,
New Delhi-110066. .....Management

AWARD

Temporary part time sweepers are being engaged by Punjab National Bank (in short the bank) against permanent vacancies. Those temporary part time sweepers are working continuously with the bank, without being regularized as part time sweeper. Settlements, dated 07.05.1984 and 08.11.1989, were entered into between the bank and the workers unions, which settlements were not complied with by the bank. PNB Employees' Union (in short the union) made representation in that regard but to no avail. Department of Economic Affairs(Banking Division), Ministry of Finance, Government of India, issued Circular No.115/2001 SCT(B) dated 19.02.2006 wherein it was emphasized on the banks to regularize services of part time sweepers as full time sweepers and not to make temporary appointments in future against regular vacancies. The said circular also remained unheeded. The union espoused cause of temporary part time sweepers and raised a dispute before the Conciliation Officer on 06.07.2009. The bank contested the claim put forward by the union and as such conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide

order No.L-12011/80/2010-IR(B-II), New Delhi dated 27.05.2011, with following terms:

> "Whether action of management of Punjab National Bank, New Delhi in denying demand of PNB Employees' Union for regularization of service of 72 temporary sweepers working at different branches (as per list annexed) is just, fair and legal? What relief workmen are entitled to?"

2. Claim statement was filed by the union on behalf of 72 sweepers before this Tribunal on 22.06.2011. The bank filed its written statement on 29.07.2011. During pendancy of the dispute for adjudication, services of Smt. Kamla and Smt. Savitri, who were concerned workmen in the dispute referred above, were dispensed with by the bank on 13.06.2013 and 01.07.2011 respectively. Complaint, moved by the union, under section 33A of the Industrial Disputes Act, 1947 (in short the Act), was registered as an industrial dispute. It has been pleaded therein that the above dispute, referred by the appropriate Government, pends adjudication before this Tribunal. Smt. Kamla and Smt. Savitri are concerned workmen, whose names appear at Serial Nos.8 and 58 respectively of the list annexed by the appropriate Government with the reference order. In contravention of provisions of Section 33 of the Act, the bank removed them for services in February 2013 and on 25.06.2013. The union presents that the bank has scant respect for law and committed flagrant violation of provisions of Section 33 of the Act. Act of the bank amounts to unfair labour practice in terms of section 25-T of the Act and it is liable to be proceeded for the offence committed by it. It has been claimed that Smt. Kamla and Smt. Savitri may be reinstated in the service of the bank with all consequential benefits.

3. Counter was made by the bank pleading that Smt. Kamla and Smt. Savitri were working as sweepers as leave gap arrangement. Smt. Kamla was working at Bhikaji Cama Place, New Delhi, since April 1998. After posting of Shri Het Ram, permanent full time sweeper, she stopped working with effect from 13.06.2013. Smt. Savitri was working as leave gap arrangement at Patparganj branch, Delhi, since September 2005. Smt. Sarla Devi was posted at the branch on 16.06.2009, who was transferred to Chawri Bazar branch on 19.09.2012, on her conversion as peon. Smt. Savitri was not working from 19.09.2012 to 22.05.2013. Smt. Savitri received her last wages only in June 2011. Claim put forward by the union that services of Smt. Savitri were terminated in February, 2011 is farther from truth. Since Smt. Kamla and Smt. Savitri were working on leave gap arrangement, they were not engaged any further when regular incumbents joined. There is no case to assert that their services were terminated by the bank. Claim put forward has no substance and may be dismissed, pleads the bank.

4. Since facts pleaded in the claim statement, relating to engagement of Smt. Kamla and Smt. Savitri as temporary part time sweepers, raising of dispute before this Tribunal, seeking regularization of their services besides others, pendancy of the dispute before the Tribunal on the dates when Smt. Kamla and Smt. Savitri were bade farewell by the bank, are not in dispute hence parties were not called upon to adduce evidence on the matter.

5. Arguments were heard at the bar. None came forward on behalf of the union to advance arguments. Shri Rajat Arora, authorized representative, advanced arguments on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

6. Section 33 of the Act bars alteration in conditions of service "prejudicial" to the workman concerned in the dispute and punishment of discharge or dismissal when either is connected with pendente lite industrial dispute "save with the permission of the authorities before which the proceedings is pending" or where the discharge or dismissal is for any misconduct not connected with the pendente lite industrial dispute without the "approval of such authority". Prohibition contained in Section 33 of the Act is two fold. On one hand, they are designed to protect the workman concerned during the course of industrial conciliation, arbitration and adjudication, against employers' harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings and on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh dispute" which further exacerbate the already strained relations between employer and the workman. Where industrial disputes are pendente lite before an authority mentioned in the section, it was thought necessary that such disputes should be conciliated or adjudicated upon by the authority in a peaceful atmosphere, undisturbed by any subsequent causes for bitterness or unpleasantness. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to contract or the provisions of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment, has been banned subject to certain conditions. This ban, therefore, is designed to restrict the interference of the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the object of those provisions. Anxiety to know about ban on the right of the employer, persuades me to reproduce the provisions of Section 33 of the Act thus:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendancy of proceedings. –(1) During the pendancy of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute.

Save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendancy of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendancy of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute –

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether any dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation. – For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit.

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit.

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

7. As noted above sub-sections (1) and (2) are designed for different purposes since sub-section (1) applies to the proposition when the employer wants to alter service conditions of the workman to his prejudice in regard to any matter connected with the dispute or for any misconduct connected with the dispute, in that situation he is obliged to seek prior permission in writing of the authority before whom the dispute is pending and in a case where the employer wants to alter service conditions of a workman in regard to a matter not connected with the dispute or for any misconduct not connected with the dispute, in that situation he is obliged to seek approval of the order under sub-section (2) of the aforesaid section. When an employer violates the provisions of sub-section (1) or sub-section (2) of section 33 of the Act, an instant

remedy is provided to the workman by the provisions of section 33A of the Act. In other words, where an employer has contravened the provisions of section 33, the aggrieved workman has been given the option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, viz. a Conciliation Officer or a Board of Conciliation, clause (a) of section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority viz. Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

8. To attract the provisions of section 33A of the Act, following conditions precedent are to be satisfied:

1. that there should have been a contravention by the management of the provisions of section 33 of the Act,
2. that the contravention should have been during the pendency of the proceedings before the conciliatory authorites or Labour Court, Tribunal or National Tribunal , as the case may be.
3. that the complainant should have been aggrieved by the contravention , and
4. that the application should have been made to the Labour Court, Tribunal or the National Tribunal in which original proceedings are pending.

9. Whether union has been able to establish above conditions. As projected in the claim statement, temporary part time sweepers are engaged by the bank. Settlements dated 07.05.1984 and 08.11.1989 were entered into between the bank and the unions, wherein it was agreed that temporary part time sweepers would be regularized as part time sweepers and full time sweepers. It is also not a matter of dispute that Department of Economic Affairs (Banking Division), Ministry of Finance, Government of India, New Delhi, issued circular suggesting to the bank that services of part time sweepers may be regularized as full time sweepers and in future temporary appointments may not be made. When above instructions/settlement were not adhered to, the union raised a dispute seeking regularization of services of 72 temporary part time sweepers. Since the bank contested the claim, the appropriate Government referred the dispute to this Tribunal for adjudication. The dispute was received by this Tribunal and registered as such on 22.06.2011, calling upon the bank to file its written statement on 12.07.2011.

10. As projected by the bank, Smt. Kamala was working as temporary part time sweeper since April 1998, whose services were discontinued with effect from 13.06.2013. Smt. Savitri was working as temporary part time sweeper since September 2005, who was bade farewell on 01.07.2011. Therefore, it is emerging over the record that during pendency of the dispute before this Tribunal, Smt. Kamla and Smt. Savitri were not engaged any further.

11. Question for consideration would be as to whether action of the bank amounts to retrenchment of services of Smt. Kamla and Smt. Saviri. For that purpose, definition of the term retrenchment is to be construed. Retrenchment has been defined in section 2(oo) of the Act, which definition is extracted thus:

> "2(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

12. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

13. The bank projects that Smt. Kamla and Smt. Savitri were working as leave gap arrangements. From its pleadings, it emerged over the record that the bank claims them to be badli workmen. "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of section 25-C of the Act, if he has completed one year of continuous service in the establishment. In other words, 'badli workman is appointed against a post, permanent or temporary, when the incumbent on that post is temporarily absent. Unless he has completed one year continuous service in the establishment, a badli workman cannot claim status of a permanent workmen, even though the management fails to satisfactorily prove that the permanent incumbent was there in the respective place or was temporarily absent. Name of badli workmen should not be found in the muster roll of the establishment, but he should act for some other workman whose name is found in the muster roll. Therefore, a workman cannot be stated to be badli workman simply because the management has chosen to describe him as badli workman in the muster roll. Explanation appended to section 25C of the Act, makes it clear that badli workman is specifically a workman who has been employed in place of another workman whose name is borne on the muster roll of the establishment. However, on completion of one year continuous service, he acquires status of a permanent workman.

14. As detailed above, Smt. Kamla and Smt. Savitri rendered continuous service for a period of 15 years and 5 ¾ years as leave gap arrangement. The bank has not come out with a plea that their engagement orders made them known that in the event of permanent employees join their duties they would not be engaged any furthers. No claim was made that action of termination of their services falls within the exceptions contained in section 2(oo) of the Act. Act of dispensing with their services does not fall within the main part of the definition, enacted by section 2(oo) of the Act. In view of these facts action of termination of their services for "any reason whatsoever" would amount to retrenchment and fall within the mischief of section 2(oo) of the Act. Evidently, there was violation of provisions of section 33 of the Act, since Smt.Kamla and Smt. Savitri were not engaged any further with effect from 13.06.2013 and 01.07.2011 respectively. By way of not engaging them, the bank contravened provisions of section 33 of the Act. That contravention was during pendancy of proceedings before this Tribunal.

15. There is no quarrel on the proposition that Smt. Kamla and Smt. Savitri were aggrieved by the contravention of the provisions of section 33 of the Act. Since contravention of the provisions of section 33 of the Act, during pendancy of compulsory adjudication proceedings of the industrial dispute has come over the record, occasion arose for this Tribunal to embark upon an adjudication of the dispute contained in the complaint under reference. The dispute which was raised by Smt. Kamla and Smt. Savitri, besides others, before this Tribunal was connected with the dispute in respect of which their services were dispensed with. Therefore, the bank was required to move an application for permission of such an action before this Tribunal, as provided by the provisions of section 33(1)(a) of the Act. Admittedly no such an application for permission was moved by the bank. Since the dispute, which was pending before this Tribunal at the time of contravention of section 33 of the Act, hence Smt. Kamla and Smt. Savitri have rightly filed this complaint before this Tribunal.

16. What is the effect of non-moving an application for permission? Such proposition was taken note of by the Apex Court in Jaipur Zila Sehkari Bhoomi Vikas Bank (AIR 2002 S.C. 643) wherein a clear case of contravention of the proviso to section 33(2)(b) of the Act was canvassed before the Court. It would be expedient to reproduce the law laid in the above precedent, which are extracted thus:

> "The proviso to Section 33(2)(b) as can be seen from its very unambiguous and clear language, is mandatory. This apart from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative, if an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or in-perative. He cannot be permitted to take advantage of his own wrong.

The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

17. The Apex Court dealt with the situation of the withdrawal of such approval application or not making an application in the following manner:

"The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws that one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

18. No application for seeking permission to dispense with their services was moved, as contemplated by the provisions of section 33(1)(a) of the Act. It is evident that dispensing with the services of Smt. Kamla and Smt. Savitri is void ab initio, since it was done by the bank in contravention of the provisions of section 33(1)(a) of the Act. Smt. Kamla and Smt. Savitri are deemed to be in the service of the bank, with all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 10.3.2014

Dr. R. K. YADAV, Presiding Officer

आदेश

नई दिल्ली, 26 मार्च, 2014

का.आ. 1150.—जबकि केन्द्रीय सरकार का मत है कि भारत सरकार के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद था ।

और जबकि केन्द्र सरकार की राय है कि उपर्युक्त विवाद राष्ट्रीय महत्व के सवाल से संबद्ध हैं और राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए ।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कलकत्ता में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-16011/3/2004-आइ आर (डी यू) दिनांक 15-12-1998 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री ए. के. चक्रवर्ती को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया;

और जबकि न्यायमूर्ति श्री ए. के. चक्रवर्ती ने उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार 31-12-1999 को छोड़ दिया;

और जबकि केन्द्र सरकार ने दिनांक 14-3-2002 के आदेश के द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री बी.पी. शर्मा को इसके पीठासीन अधिकारी के रुप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री बी.पी. शर्मा ने राष्ट्रीय औद्योगिक न्यायधिकरण का कार्यभार दिनांक 23-1-2003 को छोड़ दिया;

और जबकि केन्द्र सरकार ने दिनांक 28-1-2004 के आदेश के द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री हृषीकेश बैनर्जी को पीठासीन अधिकारी के रूप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री हृषीकेश बैनर्जी ने राष्ट्रीय औद्योगिक न्यायधिकरण का कार्यभार दिनांक 3-5-2006 को छोड़ दिया;

और जबकि केन्द्र सरकार ने दिनांक 6-3-2007 के आदेश के द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री सी.पी. मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री सी.पी. मिश्रा ने राष्ट्रीय औद्योगिक न्यायधिकरण का कार्यभार दिनांक 2-4-2009 को छोड़ दिया;

और जबकि केन्द्र सरकार ने दिनांक 14-6-2010 के आदेश के द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री माणिक मोहन को इसके पीठासीन अधिकारी के रूप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री सी.पी मिश्रा ने अपनी सेवा निवृत्ति पर राष्ट्रीय औद्योगिक न्यायधिकरण का कार्यभार छोड़ दिया;

अत: अब, कोलकाता में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है जिसके पीठासीन अधिकारी श्री दीपक साहा रे होंगे और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस चरण से आगे कार्रवाही करेंगे । जिस चरण पर यह इसे न्यायमूर्ति श्री मानिक मोहन सरकार द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे ।

[सं. एल-16011/3/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

ORDER

New Delhi, the 26th March, 2014

S.O. 1150.—Whereas the Central Govt. is of the opinion that an industrial dispute existed between the management of Govt. of India Mint and their workmen:

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal.

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No.L-16011/3/2004-IR(DU) dated 15.121998 with headquarters at Kolkata and appointed Justice Shri A.K. Chakraborty as its Presiding Officer and in exercise of the powers conferred by Sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri A.K. Chakraborty relinquished charge of the above National Industrial Tribunal on 31.12.1999;

And whereas Central Government vide order dated 14.3.2002 reconstituted the National Tribunal and appointed Justice Shri B.P. Sharma as its Presiding Officer;

And whereas Justice Shri B.P. Sharma relinquished the charge of the said National Industrial Tribunal on 23.1.2003;

And whereas Central Government vide order dated 28.1.2004 reconstituted the National Tribunal and appointed Justice Shri Hrishikesh Banerji as its Presiding Officer;

And whereas Justice Shri Hrishikesh Banerji relinquished the charge of the said National Industrial Tribunal on 03.05.2006;

And whereas Central Government vide order dated 06.03.2007 reconstituted the National Tribunal and appointed Justice Shri C.P. Mishra as its Presiding Officer;

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009;

And whereas Central Government vide order dated 14.06.2010 reconstituted the National Tribunal and appointed Justice Shri Manik Mohan Sarkar as its Presiding Officer;

And whereas Justice Shri Manik Mohan Sarkar relinquished the charge of the said National Industrial Tribunal on his retirement;

Now, therefore, a National Industrial Tribunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the stage at which it was left by Justice Shri Manik Mohan Sarkar and dispose of the same accordingly.

[No. L-16011/3/2004-IR (DU)]

P. K. VENUGOPAL, Section Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1151.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 66/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/472/1990-आई.आर. (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/91) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of WCL and their

workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/472/1990-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/66/91

PRESIDING OFFICER : SHRI R.B.PATLE

Organising Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
PO Chandametta,
Distt. Chhindwara (MP) .....Workman

Versus

Manager,
Tandsi Project,
Western Coal Fields Ltd.,
PO Tandsi,
Distt. Chhindwara (MP) .....Management

AWARD

(Passed on this 7th day of February 2014)

1. As per letter dated 10-4-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/472/90-IR(Coal-II). The dispute under reference relates to:

> " Whether the action of the Project Officer, Tandsi Project of WCL, Kanhan Area , PO Rampur, Distt. Chhindwara (MP) in dismissing from services to Shri Y. Baby S/o Yohannan clerk of Tandsi Project, WCL, Kanhan Area w.e.f. 2-3-90 is justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 4/1 to 4/9. Case of workman is that he was working as clerk in Tandsi Project in WCL since past 20 years. His performance was excellent. He had not received any kind of warnings. That he was elected as Vice President of R.K.K.M.S (INTUC) in January 1989. That he was raising day to day demand for welfare of workers. He was fighting with the management for good of the employees. That chargesheet was issued to him on 10-10-89 about 12 hours he entered in administrative section, signed in attendance register and thrown away the same as to why round has been put in his attendance on 8-10-89. The workman said that the charges were false. The allegations of abuses and threatening to kill were also false. The workman had replied to the charge denying the allegations. Enquiry was conducted denying him reasonable opportunity for his defence. In absence of Defence Assistant, enquiry was conducted . The enquiry is vitiated for violation of principles of natural justice. As enquiry is found vitiated as per order dated 19-7-02, the said order received finality. The detailed contentions of workman about the grounds of illegality of enquiry are not narrated. Ist party workman further submits that the findings of the Enquiry Officer are perverse was dismissed from service without going through the entire record. The statements of the management's witnesses are not sufficient to prove charges against him. The workman prays for his reinstatement with full back wages.

3. Management of IInd party filed Written Statement at Page 10/1 to 10/3. IInd party submits that chargesheet was issued to workman for the allegation that workman had abused Shri Indrajit Singh and threatened to kill him. It amounts to misconduct. The abuses and threats were given by the workman as to why his attendance on 8-10-89 was circled. The enquiry was conducted against workman on different dates. Workman repeatedly remained absent under the pretext of illness. The cross-examination of witness B.Prasad was adjourned enquiry was proceeded further in absence of the workman. That the workman was trying to prolong the enquiry. It is submitted that the enquiry conducted against workman is proper. It enquiry is not found proper, then management requested permission to lead evidence to substantiate charges.

4. Workman filed rejoinder at Page 11/1 to 11/7 reiterating his contentions in Statement of Claim that enquiry conducted was not proper. He was impleaded in false charges. The statement of witnesses are not sufficient to prove the charges etc. findings of Enquiry Officer are perverse.

5. Preliminary issue relating to legality of enquiry is decided by my predecessor as per order dated 19-7-10. The enquiry is found vitiated, management has been permitted to lead evidence to prove misconduct against workman.

6. Considering pleadings and facts stated above, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges alleged against workman are proved?	In Affirmative.
(ii)	Whether the punishment of dismissal from service of workman Y.Baby is proper and legal?	In Affirmative.
(iii)	If so, to what relief the workman is entitled to?	Workman is not entitled to relief as prayed by him.

REASONS

7. As stated above, enquiry conducted against workman is found illegal and the management is permitted to adduce evidence to prove the charges against workman. Management has filed affidavit of witness Ashok Kumar Soni, Head Security Guard. In his affidavit, management's witness says the incident is of 9-10-89. He was on duty at payment counter. There was queue of the employees coming for receiving bonus amount. Around 12 hours, they had noise from his side. When he turned, he noticed that Y. Baby clerk was standing in front of table of Indrajit Singh. Y. Baby was shouting loudly, uttering indecent abuses and threatening Indrajit Singh. Presently he had seen the incident at that time clerk Nagendra Sinha Chief Security Officer, Mr. Khemchand clerk were present. Shri Nagendra died on 2008. Khemchand clerk was removed from service on 12-4-89. Bisen Singh Head clerk retired in 2001 and his whereabouts were not known. Shri D.Prasad retired from service in 2002. In his cross-examination, above witness says that on 9-10-89 his duty was at counter of Tandsi Project. That about 400-500 labours has come to receive amount. He was to look after their arrangement. The distance between office and Tandsi Project is of 200 ft. The payment was made from the window. The office door was closed. Nobody could enter in office. Shri Y. Baby was clerk working in cash department was inside. Shri Y. Baby was not paying bonus to labours. Indrajit Singh was Office Superintendent. After hearing shouting, the witness had come there taking round. He got main gate opened. It required about 10 minutes time that he was concerned with the security guard. He had not received order in writing to open main gate. He was not called by Indrajit Singh. Hawaldar Bisen Singh had opened the door. He was inside. Bisen Singh was senior to him witness was told to go out and see the security. Then he had come out. In entire cross-examination, evidence of Ashok Kumar Soni that Shri Y. Baby workman was standing in front of table of Indrajit Singh and abused him in indecent language threatened to kill him is not challenged. The evidence of above point of Ashok Kumar is absolutely not shattered. The death of clerk Nagendra Singh, removal of clerk in service, retirement of Head Security Guard retirement of Shri Bisen Prasad in 2002 is not challenged. The evidence of Shri Ashok Kumar Soni is cogent that at the time of incident, workman has abused Indrajit Singh and threatened to kill him. Affidavit of evidence of Indrajit Singh is filed on record. He has also narrated the incident that workman Y. Baby was asking him that his attendance on 8-10-89 was round up. That he thrown attendance register and abused him, threatened to kill him. The report about incident given by him is also submitted alongwith affidavit. Unfortunately said witness died during pendency and could not be cross-examined.

8. The incident of present case is of 9-10-89. For long time, the case is pending. It cannot be reason to discard his evidence on affidavit filed in the matter.

9. Written notes of argument is submitted by Advocate S.Pandey is mostly devoted about the enquiry conducted against workman is not proper. Enquiry was conducted in absence of Defence Assistant. Witnesses could not be cross-examined. Workman was suffering from illness. Legality of enquiry has decided by my predecessor as per order dated 19-7-2010. Enquiry is found not proper and legal. Said order has received finality therefore the contentions on the point of legality of enquiry cannot be considered at this stage. As discussed above, the evidence of management's witness Ashok Soni about incident of 9-10-89 is not shattered. The notes of argument submitted on behalf of workman is silent about evidence of Shri Ashok Kumar Soni or Indrajit Singh. For the reasons discussed above, I hold that charges against Ist party workman are proved. Therefore I record my finding in Point No.1 in Affirmative.

10. **Point No.2—**In view of my finding in Point No.1, both charges against workman are proved from evidence of the management's witnesses, the question arises whether the punishment of dismissal imposed against workman is proper and legal.

11. Learned counsel for workman in his notes of argument has prayed for setting aside order of termination and reinstatement with back wages be allowed. Counsel for management Shri A.K.Shashi at the time of argument submits that the workman not adduced evidence. As per evidence of Shri Ashok Soni workman has taken law in his hand. Gross misconduct is proved against him. The time of affidavit filed by workman, his age was 53 years. He attended age of superannuation. There is no evidence that workman was unemployed after termination. There is no reason to interfere in the punishment. The evidence of Shri Ashok Soni and affidavit of Indrajit , report submitted alongwith affidavit of Indrajit Singh shows that the workman had asked Indrajit why his attendance on 8-10-89 was encircled. He had thrown attendance register, abused Indrajit Singh and threatened to kill him. As per evidence on record, Indrajit was working as Superintendent as such he was superior of the Ist party workman. Certainly the misconduct committed proved on part of Ist Party workman is of serious nature.

12. Learned counsel for IInd party workman relies on ratio held in :

> "Case of Kendriya Vidyalaya Sangathan Versus S.C.Sharma reported in 2005-II-LLJ-153. Their Lordship of Apex Court set-aside impugned order which granted the respondent back wages. It observed the respondent had neither pleaded nor placed any material to show that he was not gainfully employed. He pointed out that initial burden was on the employee to prove the above facts."

In present case, after enquiry found vitiated, workman has not adduced any evidence. As per findings in Point No.1, charges against workman are proved by the management. The charges against workman are about abusing and threatening to kill superior officers. Thus serious misconduct on part of workman is proved. Therefore I do not find reason to interfere in the order of dismissal. For above reasons, I record my finding in Point No.2 in Affirmative.

13. In the result, award is passed as under:-

1. The action of the Project Officer, Tandsi Project of WCL, Kanhan Area , PO Rampur, Distt. Chhindwara (MP) in dismissing from services to Shri Y. Baby S/o Yohannan clerk of Tandsi Project, WCL, Kanhan Area w.e.f. 2-3-90 is proper and justified.

2. Relief prayed by workman for reinstatement is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1152.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ए. एस. आई. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 51/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-42012/122/2005-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 51/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 26/03/2014.

[No. L-42012/122/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/51/2006

Presiding Officer : Shri R. B. PATLE

Shri Narendra Kumar Sharma,
S/o Shri Sampat Prasad Sharma,
Resident of Village & PO Sildaha,
Thana: Patharia, Tehsil Mungeli,
Bilaspur .....Workman

Versus

Superintending Archaeologist,
Archaeological Survey of India,
Nayapalli VIP Area,
Bhubaneshwar Circle,
Bhubaneshwar (Orissa)

The Superintending Archaeologist,
Archaeological Survey of India,
No. J-10, Anupamanagar,
Raipur (CG)

The Asstt. Conservator,
Archaeological Survey of India,
Bharatiyanagar,
Bilaspur .....Managements

AWARD

(Passed on this 11th day of February 2014)

1. As per letter dated 11-8-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.J-42012/122/2005-IR(CM-II). The dispute under reference relates to:

> " Whether the action of the management of Archaeological Survey of India in terminating the services of Shri Narendra Kumar Sharma w.e.f. 3-9-2001 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 2/3 to 2/4. Case of Ist party workman is that he was engaged as Security Guard from 19-10-99 with IInd party No.3. His services were orally terminated from 3-9-2001. When he claimed his salary he had filed proceeding before Labour Court, Bilaspur for recovery of wages. The said Court passed order on 13-2-04 for payment of wages within 30 days. Wages were paid to him on 14-8-04 in compliance of the order. That his services are terminated in violation of Section 25-F, G of I.D.Act. Workman was not paid retrenchment compensation. On such ground, workman prays for his reinstatement with back wages.

3. Though management of IInd party appeared and requested time for filing Written Statement on 21-2-08, no written Statement is filed by IInd party. IInd party is proceeded on 12-1-2011.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Archaeological Survey of India in terminating the services of Shri Narendra Kumar Sharma w.e.f. 3-9-2001 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services orally for violation of Section 25-F, G of I.D.Act. No Written Statement is filed by the management though appearance was caused. Workman filed affidavit of his evidence. Workman has stated that he was engaged as Security Guard on 19-10-99. His services were orally terminated from 31-12-2001. That he had completed more than 240 days continuous service. He had filed proceeding for recover of wages in Bilaspur Court. He was paid wages on 14-8-04 as per order passed by the Court. His services were terminated without notice, no retrenchment compensation was paid. Evidence of workman remained unchallenged. I find no reason to disbelieve his evidence . Considering evidence discussed above, I record my finding in Point No.1 in Negative.

6. In view of my finding in Point No.1, services of workman is terminated illegally, question arises whether workman is entitled for reinstatement with back wages. Workman was hardly working for about 2 years. The pleadings and evidence doesnot show that he was engaged following recruitment process therefore the workman cannot be allowed reinstatement. Considering the short spam of service, compensation Rs. 30,000 would be reasonable. Accordingly I record my finding in Point No.2.

7. In the result, award is passed as under :—

(1) Action of the management of Archaeological Survey of India in terminating the services of Shri Narendra Kumar Sharma w.e.f. 3-9-2001 is illegal.

(2) IInd party is directed to pay compensation Rs. 30,000 within 30 days from the date of order.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ए. एस. आई. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 52/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-42012/123/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 52/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 26/03/2014.

[No. L-42012/123/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/52/2006

Presiding Officer : Shri R.B. PATLE

Shri Roop Chand Pandey,
S/o Shri Dwaraka Prasad Pandey,
Resident of Village & PO Malhar,
Tahsil Masthuri,
Bilaspur .....Workman

Versus

Superintending Archaeologist,
Archaeological Survey of India,
Nayapalli VIP Area,
Bhubaneshwar Circle,
Bhubaneshwar (Orissa)

The Superintending Archaeologist,
Archaeological Survey of India,
No. J-10, Anupamanagar,
Raipur (CG)

The Asstt. Conservator,
Archaeological Survey of India,
Bharatiyianagar,
Bilaspur .....Managements

AWARD

(Passed on this 11th day of February 2014)

1. As per letter dated 11-8-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No. L-42012/123/2005-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the management of Archaeological Survey of India in terminating the services of Shri Roopchand Pandey w.e.f. 3-9-2001 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 2/3 to 2/4. Case of Ist party workman is that he was engaged as Security Guard from October 99 against vacant post. His service record was excellent. Workman had claimed his past salary. IInd party No.1 had assured to pay his salary. However instead of paying his salary, his services were orally discontinued from 3-5-01. That he had filed some proceeding before Labour Court, Bilaspur for recovery. Order was passed on 13-2-04 for payment of his wages within 30 days. The workman was paid his wages on 14-8-04. That his services are orally terminated from 31-12-01 in violation of Section 25-F, G of I.D.Act. Workman prays for his reinstatement with consequential benefits.

3. Though IInd party management appeared and requested time for filing Written Statement on 21-2-08, no Written Statement is filed in the matter. IInd party is proceeded exparte on 12-1-2011.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Archaeological Survey of India in terminating the services of Shri Roopchand Pandey w.e.f. 3-9-2001 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of his services orally for violation of Section 25-F, G of I.D.Act. No Written Statement is filed by the management though appearance was caused. Workman filed affidavit of his evidence stating that his services were orally terminated from 31-12-2001. That he had completed more than 240 days continuous service. He had filed proceeding for recover of wages in Bilaspur Court. He was paid wages on 14-8-04 as per order passed by the Court. His services were terminated without notice, no retrenchment compensation was paid. Evidence of workman remained unchallenged. I find no reason to disbelieve his evidence . Considering evidence discussed above, I record my finding in Point No.1 in Negative.

6. In view of my finding in Point No.1, services of workman is terminated illegally, question arises whether workman is entitled for reinstatement with back wages. Workman was hardly working for about 2 years. The pleadings and evidence doesnot show that he was engaged following recruitment process therefore the workman cannot be allowed reinstatement. Considering the short spam of service, compensation Rs. 30,000/- would be reasonable. Accordingly I record my finding in Point No.2.

7. In the result, award is passed as under:-

(1) Action of the management of Archaeological Survey of India in terminating the services of Shri Roopchand Pandey w.e.f. 3-9-2001 is illegal.

(2) IInd party is directed to pay compensation Rs.30,000 within 30 days from the date of order.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1154.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 76/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/305/2003-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 76/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL, Gevra Area, South Eastern Coalfield Limited, and their workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/305/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/76/2004

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Raj Kumar Sharma,
Clerk III of SECL,
Qr. No. M/101, Dipika Colony,
PO Gevra, Distt Korba (CG)

The President,
Rashtriya Koyla Khadan
Mazdoor Sangh (INTUC),
Qt. No. B/21, Indiria Vihar,
Seepat Road, Bilaspur (CG) .....Workman/Union

Versus

Chairman-cum-Managing Director,
South Eastern Coalfields Ltd.,
Headquarters, Seepat Road, Bilaspur,
Bilaspur

Chief general Manager,
South Eastern Coalfields Ltd.,
Gevra Project, Distt Korba ,
Korba (Chhattisgarh). .....Managements

AWARD

(Passed on this 3rd day of March, 2014)

1. As per letter dated 29-6-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/305/2003-IR(CM-II). The dispute under reference relates to:

> " Whether the action of the management of SECL Headquarters, Bilaspur in allowing the wage protection to Shri Raj Kumar Sharma on his selection to Clerk Grade III alongwith similarly placed workers and thereafter withdrawing the pay protection, only in respect of Shri Raj Kumar Sharma and recovering arrears amounting to Rs.1,25,000/- from his salary is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 2/1 top 2/3. The case of Union is that workman Raj Kumar Sharma was appointed in WCL(SECL) in 1983 Category I General Mazdoor Mechanical Fitter. After completion of one year service, he was promoted to Category II General Mazdoor (ITI). In January 1987, he was promoted to EPGH Grade E. In August 1987, he was promoted to E.P.Fitter-III in excavation cadre of NCWA. He continued to work in EP Fitter Category III till October 1995. He was placed in clerical Grade III from 2-11-95. On 1-12-97, agreement was raised between RKKMS Union and SECL management for wage protection to the workman Shri Raj Kumar Sharma. The letter was issued by Personal Manager of Dipika Project dated 26-5-99. That the management of SECL made payment of wages accordingly till October 2000.

3. It is alleged that on 20-11-2000, suddenly management of SECL issued letter to withdraw wage protection of the workman and deduction from payment was ordered. Management deducted wages of Rs. 1,25,000 from pay of workman. Union submits that the management of SECL is acting in arbitrary manner. It discriminates employee in matter of pay protection. Management has committed breach of agreement and provisions of I.D.Act, the weaker employees are discriminated by the management. It amounts to unfair labour practice. On such ground, Union is praying that benefit of pay protection of Raj Kumar Sharma be continued and suitable directions be issued.

4. IInd party filed Written Statement at Page 14/1 to 14/11 . IInd party raised objection that the workman is not covered under I.D.Act. RKKMS has no locus-standi to raise dispute. The statement of claim filed by Union through Shri K.N.Trivedi claiming to be President of RKKMS. It is reiterated that Shri Trivedi is not office bearer of said Union. He has no locus-standi to represent the employee. That Shri K.N.Trivedi is not employee of SECL neither he is office bearer of Trade Union operating in SECL. That letter was received by management from Shri S.Q.Zama, General Secretary of Mine workers Federation, Central Trade Union of INTUC. That Shri Trivedi is not office bearer. There was amalgamation of RKKMS with RCWF election of newly formed union namely Rashtriya colliery Mazdoor Congress (INYUC), Bilaspur held on 22-8-03. The registrar of Trade Union had issued letter. The Writ petition No. 927/03 is filed by Shri K.N.Trivedi.

5. IInd party further submits that the service conditions of employees of SECL are covered by NCWA and cadre scheme. The promotions are given as per cadre scheme on recommendation of DPC. The selected candidate is entitled to the pay scale prescribed for the post, pay protection is not given under NCWA. There is no agreement with Union in the matter of pay protection. It is reiterated that the selected candidates have option to join the post and they are entitled to the pay scale prescribed. The employees are not forced to work on the post, they can return back to their original post. The allegation of discrimination by management in the matter of pay protection is denied. The settlement in the matter of pay protection is denied that any agreement arrived without authority is not legal granting pay protection is matter of policy affecting the company. Pay protection policy is

decided by the company level. The management has not deducted any amount from wages of workman concerned. Workman is paid wages as per NCWA. The contentions of workman are imaginary based on assumption. IInd party prays for rejection of claim.

6. Union filed additional Statement of Claim reiterating its contentions. Management filed rejoinder at Page 15/1 to 15/5 reiterating its contentions in Written Statement.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Management of SECL Head-quarters, Bilaspur in allowing the wage protection to Shri Raj Kumar Sharma on his selection to Clerk Grade III alongwith similarly placed workers and thereafter with-drawing the pay protection, only in respect of Shri Raj Kumar Sharma and recovering arrears amounting to Rs. 1,25,000/- from his salary is legal and justified?	Withdrawal of Pay protection given to Shri Raj Kumar Sharma is proper.
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. Union has taken case of workman Raj Kumar Sharma. His pay protection was withdrawal by management of SECL and recovery of arrears from his pay. As per Para-7 of the statement of claim, workman submits that agreement was raised between Union RKKMS and SECL for pay protection. Management had denied such agreement. Workman filed affidavit of his evidence. In para-6 of his affidavit, workman has stated that as per agreement dated 1-12-97 between Union RKKMS and SECL management, pay protection was given to him. However the said agreement is not produced by workman. Workman in his cross-examination says the dispute was raised by RKKMS. He was member of said Union. He was active Union member. In his further cross-examination he says he was appointed as General Mazdoor Category I. promotions are given as per cadre scheme. He claims ignorance whether there is no cadre scheme for General Mazdoor. In his further cross-examination, workman says that for EPGH employees, separate cadre scheme is provided. In EPGH Fitter Grade-III. In 1993 he was posted as clerk Grade-III. The agreement between Union and management have taken place in 1997 but as I have noted that such agreement is not produced on record. Workman in his further cross-examination says NCWA and standing orders are condition of service. He claims ignorance whether NCWA and standing orders provide for pay protection.

9. Shri K.N.Trivedi filed affidavit of evidence. His cross-examination is on the point whether he was office bearer of RKKMS Union or that the said controversy lost relevance as workman himself has filed affidavit of his evidence in support of his claim. The order of reference made by Central Govt. is not challenged by the management therefore reference is required to be decided either way. The question whether Shri K.N.Trivedi was President of union or not after dispute was referred to the Tribunal has absolutely no relevancy for deciding the reference. Therefore I am not inclined to discuss said point in detail.

10. The documents produced by workman Exhibit W-1 about promotion on recommendation of DPC to clerk grade-II dated 22-1-03. Exhibit W-2 is office order about promotion of Shri V.B.S.Murthy, Turner Cat-IV Exhibit W-3 is office order dated 25-12-91- promotion to the post of store issuer. Exhibit W-4 is copy of interview call issued to one Ramdayal. Exhibit W-5 is copy of interview call to Shri Rajendra Singh Kunwar, exhibit W-6 is copy of fixation statement of Shri Jaiswal. W-7 is copy of fixation of Suresh Kumar Soni. All those documents are absolutely not concerned with Raj Kumar Sharma and are of no help for deciding the claim of pay protection granted to Shri Raj Kumar Sharma. Vide Exhibit W-9, letter sent by ALC, Bilaspur to Chief General Manager SECL Gevra Area observing that the workman had already raised Industrial Dispute through Union after going through the documents he felt that opportunity should be given to the management of SECL, that the management was requested to make payment as per discussion held on 1-12-97. Exhibit W-10 is letter given by Personal Manager to workman Raj Kumar Sharma that he was illegally granted pay protection. The pay protection was cancelled. As per document Exhibit W-11, Personal Manager, Dipika Project issued order dated 26-5-99 granting pay protection to the workman from 2-11-95. The said order is silent about the agreement between management and Union dated 1-12-97. No evidence is adduced by Union that Personal Manager of Dipika Project was competent to grant pay protection to the employees while order Exhibit W-11 was issued only in respect of workman Raj Kumar Sharma and any other employees were not covered in said order. Office order Exhibit W-12 is issued on 12-11-95. Ist party workman was selected as clerk Grade C on recommendation of DPC. Letter Exhibit W-13 is sent by Dy. Chief personal Manager Gevra Area on 12-2-99. On examination of papers, it was seen that workman was engaged in clerical work after he was injured in mine work therefore his pay protection seems to be right. Said letter also doesnot refer to agreement between union and management dated 1-12-97. No evidence is adduced that Dy.Personal Manager , Gevra Area was competent to grant pay protection as per Exhibit W-13.

Said letter was the basis for issuing order of pay protection Exhibit W-11. Thus the pay protection granted to workman Raj Kumar Sharma is not supported by agreement between union and the management. No rule under standing orders or NCWA is produced to grant of pay protection to the employees of SECL.

11. Management has produced documents of cadre scheme Exhibit M-1, appointment letter of workman Exhibit M-2, letter Exhibit M-3 that the General Mazdoor promoted to clerk Grade III were not entitled to protection. Said letter was issued by Dy.Chief Personal Manager of SECL, Bilaspur. Letter Exhibit M-4 is also issued by Dy. Chief Personal Manager of SECL. That pay protection is not given to Shri Raj Kumar Sharma and Maheshwar Das Clerk Grade-III. Thus the documents produced on record shows that pay protection claimed by workman was denied by the authority in 1997 itself. Management has produced documents Exhibit M-5 to M-7 relating to the cadre scheme. Detailed discussion of those documents is not necessary as the claim for Pay protection is based on agreement between the management and the Union. Said agreement is not produced or proved by the union. The evidence of management's witness Hemant Jha is consistent with the contentions in the Written Statement filed by the management. That the Personal Manager, Dipika project inadvertently by mistake granted pay protection to workman vide order dated 26-5-99 w.e.f. 2-11-95. His evidence is that workman was paid excess payment by mistake. Therefore it was decided to recover vide order dated 22-9-2000. In his cross-examination, the witness says documents order dated 10-10-97 bears signature of Dy. Chief Personal Manager. Exhibit M-3 is zerox copy of order dated 26-5-99 signed by Personal Manager. Even if hierarchy of the officers is considered, the directions issued by Dy. Chief Personal Manager has to prevail work. The Dy. Personal Manager of Gevra mines considered the matter of pay protection. The evidence of management's witness Sujata Rani is on the point that authority like Sub Area Manager, General Manager, Chief General Manager of the area has no power to grant pay protection to any employees. That workman Raj Kumar Sharma was initially appointed to the post of General Mazdoor General Category. Vide letter dated 10-10-97, Head Quarter clarified that employees in General Mazdoor Category selected to the post of Clerk Grade-III by the Selection Committee are not entitled for pay protection. His evidence on above point is not challenged in his cross-examination. Said witness in her cross-examination says workman was given pay protection in Clerk Grade-III till 1999. Thereafter pay protection was not given to him. That pay protection was wrongly given to the workman against the rules.

12. At the time of argument, learned counsel of Ist party Union Shri R.C. Shrivastava relies on ratio held in –

> "Case of Indu Bhushan Dwivedi and State of Jharkhand and another reported in SCLJ-416. Their Lordship in Para 18 held that the basic canons of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. The facts of the present case are not comparable. From Para-6 of the judgment it is clear that the chargesheet was issued to the Judicial Officer, enquiry was conducted and punishment was imposed. The punishment of dismissal from service was set-aside by substituting for voluntary retirement. The observation is not a principle laid down in the case and same cannot be beneficially applied to the case before me.

Shri R.C. Shrivastava counsel for Union further relied on ratio held in Case of Scientific Engineering House Pvt. Ltd. versus Commissioner of Income Tax. Said case related to assessee under Income Tax. The facts are not comparable . I find no ratio held in the case to support the argument advanced by learned counsel.

13. Counsel for management Shri A.K. Shashi produced copy of judgement in

Writ Petition no. 928/97 by Hon'ble High Court, Jabalpur . In Para 9 of the judgment their Lordship rejected claim of petitioners for pay protection. However directions were given that respondents shall not make any recovery of any alleged excess payment made to the petitioners on the basis of their earlier pay fixation and grant of pay protection. The copies of award in R/79/94 by this Tribunal, NGP/263/2000 by CGIT, Nagpur, R/149/97 by my predecessor, claim for pay protection was rejected, SECL was party in all those reference case.

14. Considering the reasons discussed above and agreement dated 1-12-97 between management and Union is not produced by Union, pay protection granted by Dy. Personal Manager cannot be said legal. If illegal pay protection was withdrawn, it cannot be said that the action of the management of IInd party is illegal. However excess amount cannot be recovered. For above reasons, I record my finding in Point No.1 in Affirmative.

15. In the result, award is passed as under:-

(1) Action of IInd party management of SECL in cancelling pay protection to the workman Raj Kumar Sharma is proper and legal.

(2) However IInd party shall not make any recovery of excess payment made to workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1155.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 6/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/33/2010-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Rajgama Sub Area of SECL, and their workmen, received by the Central Government on 26/03/2014.

[No. L-22012/33/2010-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/6/2011

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Jagatmani Mandal,
Ex- Mining Sirdar,
Qr. No. A-2, Rescue Room,
Rajgamar Colliery,
Post Rajgamar,
Korba (C.G). .....Workman

Versus

Dy. General Manager,
Rajgamar Sub Area of SECL,
Post Rajgamar, Korba (C.G). .....Management

AWARD

(Passed on this 13th day of February, 2014)

1. As per letter dated 27-1-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/33/2010-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the Chief General Manager of SECL, Korba Area, District Korba (CG) in terminating Shri Jagatmani Mandal, Ex-Mining Sirdar from service w.e.f. 7-7-2006 is legal and justified? To what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim. IInd party filed Written Statement. Workman not adduced evidence. Management's evidence is recorded. Application is filed by workman for withdrawing of his case. Personally I confirmed the contents of the application for withdrawal of his claim. The workman admits to withdraw his case for the reasons that his parents are ill and he deserves to look after cultivation of his land. Withdrawal is permitted. For want of prosecution, the reference cannot be decided on merit which stands disposed off.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1156.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी.आई. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 606/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/408/1999-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 606/2005) of the Central Government Industrial Tribunal-cum-Labour Court Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of FCI, and their workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/408/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No. 606/2005

Registered on 23.8.2005

Sh. Gurmeet Singh,
S/o Sh. Bakshish Singh,
Village, Duddian, PO: Majitha,
Amritsar. .....Petitioner

Versus

The District Manager,
Food Corporation of India,
86, Rani Ka Bagh,
Amritsar, Amritsar (Punjab). .....Respondents

APPEARANCES :

For the workman : Ex parte.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

(Passed on- 3.3.2014)

Central Government vide Notification No. L-22012/408/99/IR(CM-II) Dated 29.2/7.3/2000, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Food Corporation of India, Amritsar in terminating the services of Sh. Gurmeet Singh, S/o Sh. Bakshish Singh w.e.f. 1.1.1997 without paying him retrenchment compensation is legal and justified? If not, to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that he joined the service of the respondent management in 1982 and continuously worked as Palledar for 15 years against a permanent post and used to draw Rs.1890/- as salary. His Provident Fund was deducted from 1.1.1995 onwards. His services were illegally terminated on 1.1.1997 without service of any notice, charge-sheet and inquiry and payment of retrenchment compensation and in violation of the provisions of Section 25G, H and N of the Act. That he be reinstated in service.

Respondent management filed written reply controverting the averments and pleaded that workman is not its employee and there is no relationship of employer and employee between the parties. It is further pleaded that in view of Ishwari Prasad Committee Report, a 3-Member Team was constituted and it was known as TMC System and wages of the workers were paid to TMC who used to make the payment to the workers. That there were 36 labourers and during the month of January 1994, 12 more fictitious names were added without any authority by the then AM(D). That the name of the workman as included in those 12 names. That he never worked at the said depot.

Parties led their evidence.

Workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the respondent management examined K.K. Verma, Area Manager who filed his affidavit along with the documents reiterating the stand taken by the respondent management.

Workman was proceeded against ex parte vide order dated 25.1.2011.

I have heard N.K. Zakhmi, counsel for the management and have gone through the file carefully.

Though the management has taken the stand that TMC System was introduced as per Ishwari Prasad Committee Report and only 36 labourers were covered under the said scheme and later on in the year 1994, the then AM(D) introduced 12 fictitious workers including the name of the workman who did not work for the FCI, but it is for the workman to show that he actually joined the service of the respondent management. According to him he joined the service in the year 1982. There is nothing on the file except his bare statement that he actually joined the respondent management in the year 1982. He admitted during cross-examination that there was no advertisement for the vacancies and no appointment letter was issued. In the circumstances, it cannot be said that he was in the service of the respondent management which is a statutory body and is governed by its rules and regulations for employing a person. It is not shown whether any Rules and Regulations were followed before inducting the workman in the employment of the respondent management. The workman has nowhere pleaded or proved that he was inducted in the employment under the TMC Scheme in consequence of the Ishwari Prasad Committee Report. Thus it cannot be said that he was an employee of the respondent management at any point of time and his services were terminated and he is not entitled to any relief.

In result, the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1157.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 48/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/27/2013-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 48/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 26/03/2014.

[No. L-22012/27/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 21st day of February, 2014

INDUSTRIAL DISPUTE No. 48/2013

Between :

The President(Sri Bandari Satyanarayana),
Telengana Trade Union Council,
H. No. 5-295, Indranagar, Opp. Bus stand,
Mancherial-504 208,
Adilabad District. ....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur Area, Srirampur,
Adilabad district – 504303. ....Respondent

Appearances :

For the Petitioner : Party in person

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/27/2013-IR(CM-II) dated 23.4.2013 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampur, Adilabad Dist., in terminating the services of Sri Bukala Thirupathi, Ex-Badli Coal Filler, IK-1A incline, SCCL, Sreerampur Area with effect from 1.1.2003 is justified? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 48/2013 and notices were issued to the parties concerned.

2. The case stands posted for appearance of Petitioner and filing of claim statement to 21.2.2014.

3. At this stage, representative of Petitioner Union filed a memo on 21.2.2014, stating to the effect that Petitioner is not pressing the claim since management offered employment to the workman Sri Bukala Thirupathi.

4. In the circumstances, recording this memo, a 'Nil' Award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 21st day of February, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मार्च, 2014

का.आ. 1158.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 65/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/50/2013-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 65/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/50/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 21st day of February, 2014

INDUSTRIAL DISPUTE No. 65/2013

Between :

The President(Sri Bandari Satyanarayana),
Telengana Trade Union Council,
H. No. 5-295, Indranagar, Opp. Bus stand,
Mancherial-504 208,
Adilabad District. ….Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani-505 209.
Karimnagar district. ….Respondent

Appearances :

For the Petitioner : Party in person

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/50/2013-IR(CM-II) dated 30.5.2013 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavrikhani, Karimnagar Distt., in terminating the services of Sri Shaik Anwar Hussain, Ex-CF, GDK-6B Inc. S.C.Co. Ltd., Ramagundam-I Area, Godavarikhani with effect from 14.8.2001 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 65/2013 and notices were issued to the parties concerned.

2. The case stands posted for appearance of Petitioner and filing of claim statement to 21.2.2014.

3. At this stage, representative of Petitioner Union filed a memo on 21.2.2014, stating to the effect that he is not pressing his claim since management offered employment to the workman Sri Shaik Anwar Hussain.

4. In the circumstances, recording this memo, a 'Nil' Award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 21st day of February, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मार्च, 2014

का.आ. 1159.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 65/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/4/1991-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/91) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/4/1991-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/65/91

PRESIDING OFFICER : SHRI R.B.PATLE

The Organising Secretary,
RKKMS(INTUC),
Post Chandametta,
Distt. Chhindwara (MP) .....Workman/Union

Versus

General Manager,
Kanhan Area of WCL,
PO Dungariya,
Distt. Chhindwara (MP) .....Management

AWARD

(Passed on this 17th day of February 2014)

1. As per letter dated 10-4-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/4/91-IR(Coal-II). The dispute under reference relates to:

> " Whether the action of the management of W.C.L Kanhan Area in respect of their Nandan Mine No.1 in dismissing the services of Shri Panoo S/o Mouji General Mazdoor Token No. 892 is proportionate to the gravity of the offence and justified? If not to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. workman filed Statement of claim at Page 6/1 to 6/5. Case of workman is that he was employed by IInd party at Nandan Mine 15 years back. He was rendering satisfactory services. His younger son suffered from mental illness. Workman was required to take him for treatment to various places. He had informed about his inability to the management. That he could not attend duty from 1-9-88 for above reason. That on 25-2-89, he requested Suptd. Of Mines to allow him on duty but he was not allowed to join duty on the ground that he was absent from duty without satisfactory cause. Workman further submits that he had not received any documents from IInd party of enquiry conducted against him, that enquiry is conducted without his knowledge as such exparte. Workman prays to set aside order of his dismissal from service alleging enquiry conducted against him in violation of principles of natural justice. Workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 7/1 to 7/7. IInd party submits that the reference is not tenable under Section 2(k) of I.D.Act. the Union has agreed to avoid Board of Conduct formulated at company level. That workman is not member of the Union. Union is not competent to raise dispute. That workman was appointed as tub loader on 30-11-75. He was working at Nandan Colliery till 21-9-98. Workman was not on duty as he was posted to Hirdagarh Siding of Kanhan Area w.e.f. 23-9-78. He remained absent from duty on humanitarian ground. He was continued. The period of his working is shown 9 months in 1984-85, 9 months in 1985-86, Nil in 1986-87, 8 months in 1987-88.

4. IInd party submits that charge-sheet was issued to workman for unauthorised absence. Workman did not attend Enquiry Proceedings. Enquiry was conducted exparte. Charges are proved against workman of unauthorized absence. Considering report of Enquiry Officer, punishment was imposed. IInd party denies that enquiry is conducted in violation of principles of natural justice. IInd party denies that workman is entitled for reinstatement.

5. As per order dated 12-6-2012, my predecessor held that enquiry conducted against workman is legal and proper.

6. Considering pleadings between parties and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges against workman are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal of workman is proper and legal?	In Affirmative
(iii)	If so, to what relief the workman is entitled?	Workman is not entitled to relief prayed.

REASONS

7. As stated above, enquiry conducted against workman is found legal and proper by my predecessor vide order dated 12-6-2012. In view of said order, question remains for decision whether the evidence in Enquiry Proceedings is sufficient to prove charge against workman and punishment of dismissal is proper and legal. The record of Enquiry Proceedings is produced. The enquiry was proceeded in absence of workman. Statement of management witness Shri Chakravorty is recorded in Enquiry Proceedings. Management's witness has stated that workman Shri Pannu S/o Mouji General Mazdoor Token No. 892 was absent from duty from 1-9-88 till date without any intimation. Management's Representative produced document certified by Token Clerk. Exhibit C is that workman Pannu was absent from duty w.e.f. 1-9-88. The evidence of management's witness remained unchallenged. Exhibit D is produced by management's witness certified by wages clerk that Pannu had not taken any kind of leave during the period in question. The above evidence proves charges against workman. Therefore I record my finding on Point No.1 in Affirmative.

8. Point No.2- workman is challenging his dismissal from service for unauthorized absence. The question is whether the punishment of dismissal for unauthorized absence is disproportionate. The perusal of charge-sheet is 1 & 3 of the Enquiry Report shows that charges against

workman was of unauthorized absence from 1-9-88 till date of issuing charge-sheet i.e. 26-2-89. The period of unauthorised absence comes 5 months 25 days. If such long absence without intimation is considered, the punishment of dismissal cannot be said improper, illegal. I find no reason to interfere in the order of punishment as workman has not adduced any evidence on other issues. For above reasons, I record my finding in Point No.2 in Affirmative.

9. In the result, award is passed as under:-

(1) The action of the management of W.C.L Kanhan Area in respect of their Nandan Mine No.1 in dismissing the services of Shri Panoo S/o Mouji General Mazdoor Token No. 892 is proper and legal.

(2) Workman is not entitled to relief as prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 83/92) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/22/1990-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 83/92) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL, and their workmen, which was received by the Central Government on 26/03/2014.

[No. L-22012/22/1990-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/83/92

Presding Officer : Shri R.B.PATLE

The Secretary,
MP Koyla Shramik Sangh (CITU),
PO Kurasia colliery,
Distt. Surguja (MP) .....Workman/Union

Versus

General Manager,
Chirimiri Area of SECL,
PO Chirimiri ,
Distt. Surguja (MP) .....Management

AWARD

(Passed on this 27th day of February 2014)

1. As per letter dated 29-4-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/22/90-IR(C-II).The dispute under reference relates to:

> "Whether the action of the management of Kurasia colliery of Chirimiri Area of SECL inn denying the continuity of service to Shri M.K.Chanda is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 2/1 to 2/5. Case of Ist party Union is that workman ShriM.K.Chanda was working as Mazdoor Cat-II in excavation section in Kurasia colliery. That prior to 17-9-82 services of workman were unblemished. Workman was Secretary of M.P. Koyla Mazdoor Sangh (CITU) of the colliery unit. That chargesheet was issued to workman on 17-9-83 making false allegations. The chargesheet was replied by workman denying the allegations. Enquiry started on 6-6-84. Enquiry was not conducted as per principles of natural justice. The enquiry is not legal. As enquiry conducted against workman is found legal and proper, I am not inclined to narrate the pleading on point in detail. The workman has referred to statements of witnesses in their cross-examination. That MW Sahu did not accept his signature in report submitted by Security Officer Shri Pandey. Witness Pal, Shri Sonwani stated that they did not see workman instigating other workmen. Union precisely contents that the charges are not proved against him. That the punishment of dismissal imposed against him is disproportionate. It is further submitted by Union that higher leadership of the Trade Union had intervened and workman was reinstated in service. After order of dismissal was reviewed, the workman was denied continuity of service. It is illegal. Union prays that workman Shri M.K.Chanda be allowed continuity of service prior to his re-appointment from 28-10-85.

3. Written Statement is filed by IInd party at Page 7/1 to 7/7. IInd party did not dispute that workman M.K.Chanda was Secretary of M.P. Koyla Shramik Sangh. Strike notice dated 20-8-83 was served to the local management raising six demands. Strike was threatened, in case the demands were not fulfilled, the management informed ALC, Shahdol about threats of strike vide letter dated 5-9-83. There were discussions before ALC between the representative of management and Union. However

Shri Chanda did not sign those discussions. It is submitted that the workman had no intention to resort to strike on 12-9-83. However Shri M.K.Chanda had instigated 17 workmen. They had not reported to the work despite of signing attendance register on 12-9-83. It is submitted that the chargesheet was issued to Shri M.K.Chanda for misconduct under Clause 17(i)(i) of Mines Act and 38(i)(b) of Coal Mines Regulation 1957. The reply given by Shri M.K.Chanda was not found satisfactory. Enquiry Officer was appointed to Shri Baldev Singh and Shri D. Kumar Dy. Personal Manager was appointed as Management Representative. Enquiry was conducted as per rules. It is denied that principles of natural justice were not followed while conducting enquiry. On 9-6-84, Vinod Kumar Sahu, Sunil Kumar Mukherjee, Ramjee Pandey MW-I to III were produced by management. The witness were cross-examined by co-worker. On 11-6-84, statement of MW-IV Arun Kumar Singh was recorded. The witness was cross-examined. On 9-12-84, workman was called to produce his defence. However workman had given his own statement. He was cross-examined by management representative. The allegation of workman that the charges are not proved is denied. It is not disputed that on intervention of the Union leadership, workman was re-appointed on humanitarian ground from 28-9-85. Workman is not entitled to continuity of service. On such grounds, IInd party prays for rejection of the claim of Union.

4. Union filed rejoinder at Page 8/1 to 8/3 reiterating its contention in Statement of claim.

5. Vide order dated 12-12-2013, enquiry conducted against workman is found legal. Parties not adduced evidence on other issues.

6. Considering pleadings and finding on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether misconduct alleged against workman is proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the denial of continuity of service of Ist party workman is justified?	In Affirmative
(iii)	If not, what relief the workman is entitled to?"	Workman is not entitled to continuity of service

REASONS

7. As stated above, enquiry conducted against workman is found legal and proper. Both parties have not adduced evidence. The law is settled that if enquiry is found legal only evidence in Enquiry Proceedings needs to be considered towards proof of the charges. No fresh evidence can be recorded in the matter. The record of enquiry proceeding is produced at Exhibit M-1 to M-9. Exhibit M-1 is Strike Notice given by Local Union. M-2 is the report given by security guard that workman Shri M.K.Chanda had come to the factory premises should be taken out of the gate. Exhibit M-3 is also confidential letter given by Suptd. of Mines to Dy. CME about workman M.K.Chanda coming to colliery and instigated co-workers for not going to duty. Exhibit M-4 is the chargesheet issued to Shri M.K. Chanda. the allegation were causing willful damage to work in progress or to property of the employer under provisions of Mines Act 1952, breach of Mining rules 38(1)(b) . The statements of witnesses shows that Shri M.K.Chanda had come to the Mine premises and instigated workman not to go for duty. The charges are supported by same evidence. The findings of Enquiry Officer cannot be said perverse.

8. As per pleadings between parties, workman was re-appointed after intervention of Union leaders, the management submits that Shri M.K.Chanda was re-appointed on humanitarian grounds. When findings of Enquiry Officer are supported by same evidence, the denial of continuity of service to workman cannot be said illegal. Therefore I record my finding on Point No.1, 2 in Affirmative.

9. In the result, award is passed as under:-

(1) The action of the management of Kurasia colliery of Chirimiri Area of SECL in denying the continuity of service to Shri M.K.Chanda is legal and proper.

(2) Shri M.K.Chanda workman is not entitled to continuity of service.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1161.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 170/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-22012/211/1998-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th March, 2014

S.O. 1161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 170/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 26/03/2014.

[No. L-22012/11/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/170/99

Presding Officer : Shri R. B. PATLE

Smt.Shanti Sharma,
Hari Om Payasi,
Arti Payasi,
Dipika Payasi,
Arpit Payasi – LRs of
Late Surendra Kumar Sharma,
Ex.Mining Sirdar,
Narayan Incline, Purani Basti,
PO Kotma, Distt. Shahdol (MP) .....Workman

Versus

General Manager,
Jamuna & Kotma area of SECL,
PO Jamuna Colliery,
Distt. Shahdol (MP) .....Management

AWARD

(Passed on this 7th day of February 2014)

1. As per letter dated 22-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/211/98(CM-II). The dispute under reference relates to:

> " Whether the action of the management of Jamuna and Kotma Colliery of SECL, Shahdol (MP) in dismissing Shri Surendra Kumar Sharma, Mining Sirdar, w.e.f. 12-11-97 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 4/1 to 4/6. Case of Ist party workman is that he is resident of Old Kotma Village. He was working as Mining Sirdar in Bhadra Colliery since past 16 years. That chargeheet was issued to him alleging that he was absent from duty without intimation. He was unauthorisely absent. The production of the colliery was affected. Misconduct as per Rule 26-34, 26.30 of standing order was alleged. Workman had given reply to the chargesheet denying the charges. The Enquiry Officer A.K.Sinha conducted enquiry. Workman alleged that enquiry was not properly conducted. He was not given intimation about the dates of hearing of the Enquiry Proceedings. That other Enquiry Officer Shri K.S.Arya was appointed. Though he was present at Guest House on 8-2-97, no enquiry was conducted against him on that day. The workman has narrated detail. The enquiry conducted against him is illegal. As the enquiry conducted against workman is found legal by my predecessor as per order dated 28-7-02, detailed narration of contention of workman in statement of claim is avoided.

3. Workman submits that his name was taken on muster roll. He couldnot contest municipal election at Kotma. That he was suffering from illness. Intimation was given to the management about his illness. His services were terminated for unauthorised absence is not legal. As he belong to SC, he is subjected to harassment. That he was on duty for 2 days in 1993. Despite of it, he was shown absent. On such contentions, workman is praying for his reinstatement.

4. Management filed Written Statement at Page 8/1 to 8/3. IInd party submits that the workman was absenting from duty continuously from 16-5-93 till his dismissal. Workman was holding statutory provision for his absence. Work suffered as workman was absent without leave. Chargesheet was issued to him on 16-10-96 under Clause 26.30 of Standing order. That enquiry was conducted against workman. The Enquiry Officer found charges proved against workman. Workman did not bring any documents about his treatment. The contentions of workman are false. He had not submitted any information for his absence. IInd party submits that showcause notices were issued to the workman before his dismissal. The punishment of dismissal is legal.

5. Ist party has filed rejoinder at Page 9/1 to 9/5 denying contentions in Written Statement filed by the management. Workman has reiterated his contentions in Statement of claim.

6. Enquiry conducted against workman is found legal as per order dated 28-7-2010. Considering pleadings on record and finding on preliminary issue, points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges against workman are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal from service of workman is legal and proper?	In Affirmative
(iii)	If so, to what relief the workman is entitled?	Relief prayed by workman is rejected.

REASONS

7. Enquiry conducted against workman is found legal and proper. Question arises whether the charges against workman are proved from evidence in Enquiry Proceedings. As per document Exhibit W-5, the charges against workman are that he was in habit of remaining absent from duty without reasons (Clause-26/24). That workman was remaining absent from duty without sanctioned leave/period of sanctioned leave (Clause-

26/30). Management's witness in his statement at Page 12/12 has stated that workman was unauthorisely absent from duty from 16-5-93. Bonus register was produced . that workman was present for 2 days in the month of May. The workman in his further statement stated that he has intimated that no statement is given by workman about his illness. The statement of management's representative that workman was absent from duty from 16-5-93 is not shattered in cross-examination. Workman has not produced documents about intimation given of his illness to management. Said document are not proved in Enquiry Proceedings . Therefore I record my finding in Point No.1 in Affirmative.

8. Point No.2- the question arises whether the punishment of dismissal from service against workman is proper and legal. The punishment is imposed for unauthorized absence of workman from 16-5-93. Learned counsel for workman Shri R.C.Shrivastava argued that there was no charge of habitual absenteeism against workman. In chargesheet issued to workman allegation narrated above relates to his absence from duty and absence without prior sanctioned leave. The charges against workman are not of habitual absence.

9. Copy of certified standing orders of SECL is made available by learned counsel for management. Different kinds of leave are provided. At the time of earlier day, the argument was heard. The record of Enquiry Proceedings was pointed out. The endorsement made by Chief General Manager and Personal Officer were pointed out from Page 25 of the record of enquiry. It was submitted by learned counsel for Ist party Shri R.C.Shrivastava that the order of dismissal is not issued by the competent authority. Learned counsel for IInd party Shri A.K.Shashi submits that the dismissal of workman was approved by the endorsement made by Chief General Manager and Personal Officer. A copy of circular dated 9-12-91 is produced. Said circular deals that competent authority in respect of areas of SECL i.e. Chief General Managers, General Managers, of the areas, Sub Area Manager, Departmental heads will be the competent authority to exercise powers delegated to them by CGM, GM for implementation taking appropriate action such as situation of enquiry etc./disciplinary action. The circular is clear that power to take final disciplinary action will be vested with Chief General Manager/General Manager. The copy of circular dated 31-3-08 is also produced. Said order cannot be beneficially used as the services of workman are dismissed on 14-11-97. The order is signed by Sub Area Manager. As per circular dated 9-12-91, the Competent Authority provided have no power to take final disciplinary action. Those disciplinary authorities have only powers to issue chargesheet constituting enquiry committees, disciplinary action etc. under the provisions of Certified Standing Orders. However the power to take final disciplinary action will be vested with the CGM/GM.

In present case the record of enquiry Page 25 shows notesheet was submitted by Dy.Personal Manager for appropriate orders of enquiry. The note was approved by Chief Manager. Further it finds remark of Personal Officer for issuing appropriate order. The order of dismissal is issued by Sub Area Manager.

10. Learned counsel for IInd party Shri A.K.Shashi on above point relies on ratio held in

> "Case of A.P.Khadi and village Industries Board, Hyderabad and others versus R. Radhakrishnamurthy reported in 1997(3) Supreme Court Cases 230. Their Lordship dealing with communication of order-Competent Authority granting its approval in file while formal order issued by a subordinate authority. Validity of order single Judge of High Court declaring respondent dismissal valid after perusing Note file in which approval had been granted by competent authority though formal order was issued by a subordinate authority. The Single Judge remarked as follows in his judgment.'' A perusal of the records shows that the entire proceedings were taken with the approval of the Chirman commending from the order of suspension to the date of the impugned order. The Note File of the Board contains the signature of the Chairman on 24-5-87 to 20-11-87 to the effect that the impugned proceedings were issued by the Chairman. Their Lordship held direction of Division bench was not justified when the single Judge had satisfied himself that respondent was dismissed with the approval of the Chairman."
>
> In present case Page 25 of Enquiry Proceedings finds clear approval for dismissal from service of workman on …….. the further direction by Personal Officer are relating to issue of appropriate orders. The reasons for dismissal order are given in the order. Signed by Sub Area Manager. Considering ratio in above cited case, the order approved by Chief Manager cannot be said illegal.

11. Learned counsel for Ist party Shri R.C.Shrivastava submits that there was no charge of habitual absenteeism and legal question can be raised at any time. Reliance is placed on ratio held in

> "Case of Chittoori Subbanna versus Kudappa Subbana and others reported in AIR-1965-SC-1325. Their Lordship of the Apex Court held pure question of law not dependent on the determination of any question of fact should be allowed to be raised for the first time in the grounds of appeal by the first appellate Court."
>
> Above principle is not disputed by learned counsel for IInd party Mr. Shashi.

12. Learned counsel for Ist party Shri R.C. Shrivastava further submitted that the reason are not given while passing the dismissal order of workman. It indicates non-application of mind by competent authority. In support of his submissions, learned counsel relies on ratio held in

> "Case of A.L. Kalra versus Project and Equipment Corporation of India Ltd. Reported in AIR(SC)1984-0-1361. In para-6 of the judgment their Lordship observed salient feature which files into the face about the findings recorded by the Inquiry Officer and the order made by the Disciplinary Authority as well as the Appellate Authority is that none of them made a reasoned order or speaking order and their conclusions are mere ipse dixit unsupported by any analysis of the evidence or reasons in support of the conclusions."
>
> The conclusions are not supported by any analysis of the evidence or reasons in support of conclusions. The approval of note at Page 25 implies application of mind. The detailed reasons for dismissal are stated at Page 24, Page 23 also finds reasons for dismissal. Therefore the ratio held in above cited case cannot be beneficially applied to case at hand.

13. The chargesheet was issued to workman on 16-10-96 for unauthorized absence from 16-5-93 till dismissal. The record of Enquiry Proceedings shows workman was claiming inability to work underground asking for light duties. His request was not accepted. Workman did not resume duty and order of his termination dated 12-11-97. Workman has not adduce evidence on other issues. Documents about heart illness are not proved by the workman. Therefore the order of dismissal of workman does not call for interference. For above reasons, I record my finding in Point No. 2 in Affirmative.

14. In the result, award is passed as under:-

(1) Action of the management of Jamuna and Kotma Colliery of SECL, Shahdol (MP) in dismissing Shri Surendra Kumar Sharma, Mining Sirdar, w.e.f. 12-11-97 is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1162.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 291/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-20012/102/1999-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 291/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 26/03/2014.

[No. L-20012/102/1999-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM : Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE No. 291 of 1999

PARTIES	:	The Mannan Mullick Vice President, Rastriya Colliery Mazdoor Sangh, Rajenmder Path, Dhanbad Vs. The General Manager, P.B. Area of M/s. BCCL, Kusunda, Dhanbad

APPEARANCES :

On behalf of the workman/Union	: Mr. R.S. Rana, Ld. Advocate
On behalf of the Management	: Mr. S.N. Ghosh, Ld.Advocate
State	: Jharkhand
Industry	: Coal

Dhanbad, Dated the 11th February, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/102/99-IR(C-I) dt 04.08.1999.

SCHEDULE

> "Whether the action of the Management of Goplichak Colliery of M/s. BCCL in not providing employment to Shri Ram Kumar Paswan, S/o Smt. Fulia Kamin, H.C. Stacker under Voluntary Retirement Scheme of the Company is justified? If not, to what relief Shri Ram Kumar Paswan is entitled?"

On receipt of the Order No L-20012/102/99-IR(C-I) dt 04.08.1999 of the above mentioned reference from the Government of India, Ministry of Labour,New Delhi for adjudication of the dispute, the reference Case No.291 of 1999 was registered on 16th August,1999 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearances personally and through their Ld.Adovactes respectively filed their pleadings and their documents concerned.

2. The case of sponsoring Rastriya Colliery Mazdoor Sangh, Dhanbad, for petitioner Ram Kumar Paswan is that Smt.Fulia Kamin was a permanent employee and a HC Stacker at Gopalichak Colliery. She had made her application dt.27.5.1995 for employment of her son Ram Kumar Paswan under the Voluntary Retirement Scheme (V.R.S.). The Management of the Colliery accepted her application. As per instruction of the managememt, she submitted to the management all the relevant documents duly certified by the Mukhiya/the BDO etc .The Management referred to the Area Management which also referred to the BCCL,H.Qr.,Koyla Bhawan for approval and needful in 1995 for her son's appointment as early as possible.Smt.Fulia Kamin and her son Ram Kumar Paswan made outmost approaches to the BCCL Authorities, but all ineffective .lastly, the Industrial Dispute through the Union under ALC© File No.1/51/97 E3 was raised, but its failure in conciliation due to restiveness of the O.P./ Management resulted in the reference for an adjudication.

3. Smt. Fulia Kamin in her rejoinder denied all the allegations of the O.P./Management ,and stated that admittedly she had submitted her relevant papers on 21.5.1995 about one year ago the V.R.S. (Female Scheme) as per the G.M.(P)'s letter dt.5.9.1995 extending up to 30.06.1996,but the Project Officer of Gopalichak Colliery closed her case as devoid of merits. Latches and delay was on the part of the Management of BCCL so as to superannuate her at her 60 years. The Management has violated the provision of Articles 12 & 14 of the Indian Constitution as well as the principle of natural justice. So she is entitled to get the employment of her said son under the said scheme.

4. Whereas categorically denying the allegations of the workman, the pleaded case of the O.P./management is that Smt.Fulia Kamin was appointed on 21.10.1997 and her date of birth as recorded in form 'B', the Statutory register the Colliery, was 23.5.1940. She had been working as H.C.Stacker in Gopalichak Colliery. The Special Voluntary Retirement Scheme for female employees as per the BCCL/ GM(P)(P.S.)/95/8188-288 dt.12.4.1995 came into force from April,1995 for a period of six months. It was further extended for one year from 01.07.1995 to 30.06.1996 as per the Circular Letter No.BCCL/GM(P)SECY/95 dt.5.9.1995 which was applicable only to the female employees their 50 years age opting for their retirement.Smt.Fulia Kamin had applied/submitted her application on 27.5.1995 for Spl.Voluntary Retirement, and its forwarding to the H.Qr. and putting up before the proper Authority on 6.10.95,it was returned to the Area on 8.6…. for certain clarification,. As per clauses 12 & 13 of the Spl.V.R.S., its scrutiny and forwarding to the H.Qr. ought to have been within 3 days and it finalization by the G.M.(P) within 15 days as per its clause 14.According to the General Clause II of the S.V.R.S. Circular, the day the nominee of the retiring employee gets employment, the retiring employee ought to have automatically ceased to work. But as per the records of the managment, there was no communication to the workwoman for retirement till 8.7.1999, as result she continued to work till her age of 59 years and 2 months. So as per clause III of the General Rule, it was the prenegative of the Management to reject any application without assigning any reason. Thus there was no wrong on the part of the management in doing so under the Spl.V.R.S,. for female employees. The petitioner is not entitled to any relief, as his mother worked in the colliery till the last date of her employment.

Further stated in its rejoinder that the workwoman in course of her continuous working simultaneously raised the Industrial dispute before the ALC© which also failed. So her claim for providing an employment to her son is meritless, and as such the petitioner is not entitled to any relief.

FINDING WITH REASONS

5. In the instant case, WWI Fulia Kamin,the workwoman herself, and WW2 Arjun Paswan,her son-in-law for the Union concerned, and MWI Ram Chet Beldar, the Munshi,for the O.P./management have been examined respectively. The entire case is based on mere oral statement of both them parties.

WWI Fulia Kamin,the workwoman herself, as per her statement has stated to have firstly made an application dt.27.5.1995 for employment of her son Ram Kumar Paswan under the Voluntary Retirement Scheme of the Company of M/s BCCL which was accepted with all relevant documents by the management of Gopalichak Colliery, yet neither her son could be employed nor any reasons was assigned by the Management. Corroborating the statement of his mother-in-law Fulia Kamin(WWI),WW2 Arjun Paswan has to say that the VRS Scheme under which her mother-in-law had applied in the year for employment of her son was applicable to the employees completing their services up to 50 years of age, and his mother-in-law had completed her service upto 55 years of age; and even after application for V.R.S., she kept on

working in the colliery, but she did not get any letter of the appointment for her son in place of her V.R.S.

Whereas the statement of MWI Ram Chet Beldar,the Munshi of the Gopalichak Colliery is that Fulia Kamin,the permanent Hard Coke Stacker at the colliery whose date of birth recorded as 23rd May,1940, had though applied on27.5.1995 under the V.R.S(female) without the requisite documents, yet the same not filed at the relevant time within the extended period of the Scheme from 1.7.1995 to 30.06.1996, meanwhile she finally retired on 28th July,1999 keeping on working; so her application was rejected by the Management.

Mr.R.S.N..Singh, the Learned Counsel for the Union/ workwoman has to submit that though the applicant (workwoman) had applied within time for the employment of her son Ram Kumar Paswan under the Spl.VRS (Female), no employment could be given to him without any plausible reason. Just contrary to it, the contention of Mr.S.N.Ghosh,the Learned Advocate for the O.P./ Management is that the petitioner workwoman could not file her complete application under the Spl.V.R.S.(Female) at the relevant time for employment of her said son; moreover, the said scheme provides for the discretionary power of the management over the aforesaid matter; so the action of the management of the said colliery in not providing an employment to Shri Ram Kumar Paswan S/O Smt.Fulia Kamin under the V.R.S. is right,porper and legal, and the claimant is not entitled to any relief.

On the consideration of overall matters as orally brought on the case record, I find that the claimant's case in lack of the proof of her application to have applied with full documents is unsustainable ,as she kept on working, and retired from her service on her superannuation .In resut,it is hereby responded and accordingly.

ORDERED

The action of the Management of Gopalichak Colliery of M/s BCCL in not providing an employment to Shri Ram Kumar Paswan S/o Smt.Fulia Kamin,H.C.Stacker,under the Voluntary Retirement Scheme of the Company is quite justified.Therefore,Shri Ram Kumar Paswan is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1163.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1 धनबाद के पंचाट (संदर्भ संख्या 46/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-20012/249/2002-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 46/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 26/03/2014.

[No. L-20012/249/2002-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

Reference: No. 46/2003

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act. 1947.

Employer in relation to the management of Sijua.Area M/S BCCL

AND

Their workmen.

PRESENT : SRI R.K.SARAN, Presiding Officer

Appearances:

For the Employers : Sri D.K. verma, Advocate

For the workman : None

State : Jharkhand.

Dated : 11-2-2014

AWARD

By order No. L-20012/249/ 2002 /IR (C-I) dated 13.06.2003, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the promotion of Smt Ruth Ekka and 14 others nursing staff (as per list) from Tech. Gr."C" to Tech Gr. "B" by the management of BCCL , Regional Hospital, Loyabad w.e.f. from 01.01.1994 was legal and justified?'

(ii) Whether the revision of date of above promotions from 01.01.1994 to 01.01.1995 by subsequent orders of the management was justified?"

(iii) Whether fixation of wages of the above workmen upon promotion with one annual increase was fair , legal and justified?' and

(iv) Whether the action of the management in affecting recoveries on account of excess wage paid upon promotion and wage fixation as above, from the

salaries of the above workmen is just, fair and legal ? If not, what orders are necessary in this regard?'

Annexure (List of workmen)

1. Mrs. Fulgencia Xess
2. Mrs. Jharna Chakerbarty
3. Mrs. Ruby Hassa
4. Mrs Pitricia Tudu
5. Shanti Kumari Dutta
6. Mr. S.N. Mishra
7. Mr. Madhusudhan Singh
8. Mr. B.N. Jha
9. K.N. Singh
10. Mrs. Esther Murmu
11. Mr. Shiv Chandra Bhakta
12. Mrs. Komilina Hmbram
13. Mr. Surendra Pd.Singh
14. Mrs. Dayamani Hans

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1164.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एअर लाईनस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 25/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-11012/08/2003-आईआर (सी एम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 25/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of M/s. Indian Airlines and their workmen, received by the Central Government on 26/03/2014.

[No. L-11012/08/2003-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I , KARKARDOOMA COURTS COMPLEX DELHI

I.D. No. 25/2007

Shri Jaipal,
Through the General Secretary,
Airport Employees Union,
3, V.P. House, Rafi Marg,
New Delhi - 110001. .....Workman

Versus

1. The General Manager,
M/s. Indian Airlines,
IGI Terminal-I, Palam,
New Delhi.
2. M/s. Aroon Enterprises,
H.No.423, Village &
Post Office Kapashera,
New Delhi.
3. M/s. Sunshine Enterprises,
A-60, Nirmal Puri,
Lajpat Nagar-IV,
New Delhi-110024. .....Managements

AWARD

Erstwhile M/s Indian Airlines (in short the Airlines) awarded contract for annual maintenance of cleaning of Aircrafts A 300 and A 320 on night halt at Indira Gandhi International Airport, New Delhi to M/s Aroon Enterprises. Writ petitions No.3823 of 98, and 2300 of 99 were filed by employees of the contractor for regularization of their services with the Airlines. Interim order was passed by High Court of Delhi on 10.08.1998 in writ petition No.3823 of 98, directing the Airlines not to dispense with the services of petitioners, till disposal of the petition. Contract of M/s Aroon Enterprises came to an end and fresh contract was awarded to M/s Sunshine Enterprises. In compliance of the interim order passed by High Court of Delhi, the Airlines wrote to the Contractor to absorb the petitioners, numbering six, in their employment. Writ petition was dismissed by the High Court in the year 2001. Services of the claimant were dispensed with by the contractor on 01.01.2002. The claimant approached the Airport Employees' Union (Regd.) (in short the Union) for redressal of his grievances. The union raised an industrial dispute before the Conciliation Officer. Since the claim was contested by the Airlines as well as the contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-11012/8/2003-IR(CM-I), New Delhi dated 21.02.2007, with following terms:

"Whether demand of Airport Employees Union to reinstate Shri Jaipal, ex-Cleaner with full back wages in the services of M/s Sunshine Enterprises or M/s. Indian Airlines, is legal and justified? If so, to what relief the concerned workman is entitled?"

2. The Airlines assailed the reference order before the High Court of Delhi by way of writ petition No.WP(C) 8309 of 2007. The petition was dismissed by the High Court vide its order dated 26.02.2013, wherein this Tribunal was called upon to determine whether contract between the contractor, namely, M/s. Sunshine Enterprises and the Airlines is a genuine contract or sham and nominal one. After determination of the said proposition, the Tribunal was required to deal the issues referred for adjudication by the appropriate Government. Parties were directed by the High Court to co-operate in the proceedings and not to seek undue adjournments in the matter.

3. During pendancy of the writ petition No.WP(C) 8309 of 2007, claimant filed his claim statement before the Tribunal. It was pleaded therein that the claimant was engaged by the Airlines through M/s. Aroon Enterprises and M/s. Sunshine Enterprises with effect from 22.10.1996. The Airlines was his principal employer. His wages were Rs. 2592.00 per month. Claimant worked as cleaner of aircrafts with the Airlines. Vide letter No.456 dated 29.05.2001, services of the claimant were transferred to M/s. Sunshine Enterprises since the earlier contractor, namely, Aroon Enterprises had changed. Claimant had been continuously serving under M/s. Sunshine Enterprises. He used to do external and internal cleaning of A 320 aircrafts and internal cleaning of A 300 aircrafts at Terminal 1A, Indira Gandhi International Airport, New Delhi.

4. He was informed by the principal employer that on change of the contractor, his services have been transfered to a new contractor, who would engage him as per conditions laid down in the agreement between the Airlines and the new contractor. His services were illegally terminated by the contractor on 01.01.2002, while he was working under direct control of the Airlines. Work performed by him was perennial in nature. At the time of termination of his service, neither one month's notice nor pay in lieu thereof and retrenchment compensation was paid to him. Since the contract agreement was sham and nominal, he was an employee of the Airlines. His services are liable to be regularized by the principal employer. He claims that an award may be passed holding termination of his services as illegal and unjustified and reinstating him in the service of the Airlines with continuity and full back wages.

5. Written statement was filed by Aroon Enterprises pleading therein that the claimant was employed by them to discharge their contractual obligations with the Airlines. Their contract came to an end on 29.05.2001. Contract was awarded to M/s. Sunshine Enterprises with a stipulation therein that the new contractor shall employ the claimant and others in its services. It has been projected that since the contract has come to an end, the answering respondent has no responsibility of any sort relating to the services of the claimant.

6. The Airlines filed written statement pleading therein that the claimant was engaged by the contractor, to whom contract for annual maintenance of aircrafts at Indira Gandhi International Airport, New Delhi, was awarded. He used to clean aircraft A 300 and A 320 at night halts at Indira Gandhi International Airport, to discharge contractual obligation of his employer. Work of annual maintenance of cleaning aircrafts has not been prohibited under the Contract Labour (Regulation & Abolition) Act, 1970. Contract awarded to the contractor was a contract for services and not of services. Claimant never worked under control and supervision of the Airlines. He was an employee of M/s. Sunshine Enterprises, the contractor. The claimant worked under supervision and control of his employer. Relationship of employer and employee never existed between the claimant and the Airlines.

7. Writ petitions bearing No.3823 of 1998 and 2300 of 1999 were filed by the employee of the contractor, claiming regularization of their services with the Airlines. Claimant was one of the parties to these writ petitions, which were dismissed as withdrawn. During pendancy of writ petition No.3823 of 1998, interim order was passed by the High Court of Delhi on 10.08.1998. In compliance of the said interim order, the Airlines wrote letter dated 29.05.2013 to the contactor asking him to engage services of the claimant. Subsequently, the said writ petition was dismissed in the year 2001. Therefore, writing of that letter nowhere projects that the claimant was engaged by the contractor as an agent of the Airlines. As per his own admission, services of the claimant were dispensed with by the contractor, his employer. Contract entered into between the Airlines and the contractor was genuine. Claimant was paid his wages by the contractor, under whose supervision and control he worked. Under these circumstances, no case has been made out in favour of the claimant to project that he is entitled for reinstatement in service of the Airlines. Claim projected has no substance, hence it merits dismissal, pleads the Airlines.

8. On receipt of instructions from High Court of Delhi, pursuant to order dated 26.02.2013, notice was sent to the claimant by registered post on 08.03.2013 calling upon him to participate in the proceedings on 20.03.2013. Notice was sent to the claimant through Airport Employees Union (Regd.), 3 Vithal Bhai Patel House, Rafi Marg, New Delhi, the address provided by the appropriate Government in the reference order. Another notice was sent to the claimant by registered post on 23.08.2013 calling upon him to join the proceedings on 27.09.2013. Notice was sent to the claimant by registered post on 30.09.2013 calling upon him to join the proceedings on 29.10.2013. Last notice was sent to the claimant on 28.11.2013 calling upon him to

join the proceedings on 16.12.2013, which notice was received back with the report that the claimant had left the given address, many years ago. Efforts were made by the Tribunal to call the claimant to join the proceedings, which efforts proved futile, since the claimant had left the address for good and no other address was available with the Tribunal for calling the claimant to join the proceedings and prove his case.

9. Despite notice referred above, claimant opted not to participate in the proceedings. No evidence was adduced on his behalf to substantiate his claim. Since the claimant abandoned the proceedings hence the Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed. Airlines also opted not to adduce any evidence in the matter. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Ravi Gopal, authorised representative, presented facts on behalf of the Airlines. None raised submissions on behalf of M/s. Aroon Enterprises as well as M/s. Sunshine Enterprises. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on the issues involved in the controversy are as follows:-

10. Terminology of the reference order puts onus on the claimant to establish that his demand for reinstatement in service with full back wages by M/s Sunshine Enterprises or the Airlines is legal and justified. To establish his claim for reinstatement in service, it was incumbent upon the claimant to put forth his case that he rendered continuous service of 240 days, as contemplated by provisions of section 25B of the Industrial Disputes Act, 1947(in short the Act), in preceding 12 months from the date of termination of his services. When he succeeds in establishing that he rendered continuous service of 240 days, as contemplated by section 25B of the Act, then he has to establish that action of his employer in terminating his services falls within the ambit for retrenchment, as defined by section 2(oo) of the Act. He had also to discharge onus that retrenchment was violative of provisions of section 25F of the Act.

11. The claimant is under an obligation to bring cogent evidence to establish that he rendered continuous service of 240 days and his services were dispensed with in violation of provisions of section 25F of the Act. He has to establish that one month's notice or wages in lieu thereof, besides retrenchment compensation was not given to him. As projected above, claimant had adduced no evidence at all. Onus is there on the claimant to establish that termination of his services amounts to retrenchment, which was violative of provisions of section 25F of the Act. In the absence of any evidence over the record, it cannot be concluded that order dispensing with the services of the claimant amounts to retrenchment and that too the same is violative of provisions of section 25F of the Act. Under these circumstances, it is announced that no case has been established by the claimant to hold that termination of his service is retrenchment and that too violative of the provisions of section 25F of the Act. Resultantly, it cannot be concluded that the claimant has been able to establish that his demand for reinstatement in service of M/s. Sunshine Enterprises is legal and justified.

12. Claimant was under an obligation to establish that the contract entered into between the contractor and the Airlines was sham and bogus. In order to discharge his onus, he had to establish that though he was an employee of the contractor yet element of control and supervision in respect of detail of work was with the Airlines. He had to probablise that the Airlines retained power not only to direct what work is to be done but also of controlling the manner of doing the work. Control of the Airlines was not directed towards providing or dictating the nature of work to be done, but reference to other incidents having bearing on the process of work, which he used to carry out. In that regard, it was for the claimant to establish that he was under the administrative and financial control as well as supervision of the Airlines. He was to establish that disciplinary control was exercised over him by the Airlines by way of codifying rules of conduct for him. There is conspicuous absence of evidence, ocular or documentary, in that regard. No evidence at all is brought over the record to project that the contract left administrative, managerial, financial and disciplinary control in the hands of the Airlines. Thus, it is evident that the claimant has miserably failed to project that the contract entered into between the Airlines and the contractor was sham and nominal. Under these circumstances, it cannot be concluded that the claimant would be deemed to be an employee of the Airlines and termination of services by the contractor was uncalled for.

13. In view of the above facts, it is crystal clear that the claimant could not project a case for reinstatement in service of the contractor, not to talk of reinstatement in service of the Airlines. His claim has no substance. He is not entitled to any relief. His claim is, accordingly, brushed aside. An award is passed in favour of the Airlines and against the claimant. It be sent to the appropriate Government for publication.

Dated : 4-3-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1165.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 88/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-20012/65/2012-आईआर (सी एम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 26/03/2014.

[No. L-20012/65/2012-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947

REFERENCE No. 88 of 2012

PARTIES : The Area President, BCKU, Bassuria Colliery Branch, Kusunda, Dhanbad

Vs.

: The General Manager, Kusunda Area of M/s. BCCL, Kusunda, Dhanbad.

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dhanbad, Dated, the 11th Feb., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/65/2012-IR(CM-I) dt. 22.11.2012.

SCHEDULE

"Whether the action of the Management of Bassuria Colliery of BCCL in not regularizing Sri Raj Kumar Kanoujia in the post of Leave Clerk is fair and justified? To what relief is the workman concerned entitled?"

2. Neither Union Representative for Bihar Colliery Kamgar Union, Bassuria Colliery, Kusunda, Dhanbad nor workman Raj Kumar Kanoujia appeared nor any written statement with any document filed on his behalf despite three Regd. notices on the address of the Union Representative. But Mr. D. K. Verma, the Ld. Advocate for the O.P./Management is present. The Union Representative and the workman by their conducts clearly appear to be uninterested to contest the case which is related to an issue of regularization of the workman in the post of Leave Clerk.

Under these circumstances, the case is closed as 'No Industrial Dispute' existent; accordingly it is passed an order to that effect.

KISHORI RAM, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1166.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टी एस एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 7/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-20012/101/2006-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. Tata Steel Ltd., and their workmen, received by the Central Government on 26/03/2014.

[No. L-20012/101/2006-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Reference: No. 7of 2007

In the matter of reference U/s 10 (1) (d) (2A) of I.D.Act. 1947.

Employer in relation to the management of Sijua Group of Collieries M/s. Tisco

AND

Their workmen

PRESENT : SRI R. K. SARAN, Presiding Officer

Appearances :

For the Employers : Sri D.K.Verma, Advocate

For the workman : None

State : Jharkhand.

Industry : Coal

Dated : 13/2/2014

AWARD

By Order No. L-20012/101/2006-IR (CM-I) dated 02/04-02-2007, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Sijua Colliery of M/s. Tata Steel Ltd., in dismissing Shri Kali Charan Mahato from Service w.e.f. 11.07.2002 justified &legal? If not to what relief the concerned workman is entitled?"

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअर इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 90/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/03/2014 को प्राप्त हुआ था।

[सं. एल-11012/17/2012-आईआर (सी एम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2012) of the Central Government Industrial Tribunal-cum- Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the management of Air India, and their workmen, received by the Central Government on 26/03/2014.

[No. L-11012/17/2012-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 21st February, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 90/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of National Aviation Company of India Ltd. and their workman)

BETWEEN

Sri S. Saran	: 1st Party/ Petitioner

AND

1. The Chairman & Managing Director M/s National Aviation Company of India Ltd., Air India Building, Nariman Point, Mumbai-400021	: 2nd Party/ 1st Respondent
2. The Executive Director (Operation & Trang) M/s National Aviation Company of India Ltd. Central Training Establishment Hyderabad	: 2nd Party/ 2nd Respondent

APPEARANCE:

For the 1st Party/Petitioner	: M/s. R. Prabhakaran, M. Yuvaraja, Advocates
For the 2nd Party/1st & 2nd Respondents	: M/s. N.G.R. Prasad, N. Stalin, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-11012/17/2012-IR (CM-I) dated 16.11.201 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Air India, represented by the Chairman & Managing Director, Mumbai & Executive, (O&T) Hyderabad, in terminating the services of Sri S. Saran, an ex-pilot is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 90/2012 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement in brief are these :

The petitioner had joined under the Respondents as Trainee Pilot. After completion of the training, the petitioner had obtained necessary endorsement and instrument rating, and the petitioner was appointed as the Second Officer. He was entitled to be appointed as First

Officer on completion of 3 release checks. He had furnished the required Bank Guarantee. While so, on 5/16//12/2008 the Second Respondent issued a Show Cause Notice to the petitioner alleging that he had obtained Staff on Duty (SoD) ticket for ATPL Examination and used one of those tickets for travel by another and that the petitioner had suppressed completion of his course in Dentistry. The petitioner has submitted explanation for this. However, the Second Respondent terminated the service of the petitioner by order 16/19/.2.2009. The petitioner had preferred an appeal before the First Respondent against this order. The appeal was dismissed. The petitioner then preferred a Writ Petition before the High Court of Madras to quash the termination order. The Hon'ble Court set aside the order directing the First Respondent who is the appellate authority to consider the appeal on merits and pass appropriate orders. The Second Respondent again confirmed the order of termination on 19.02.2009. The petitioner preferred Writ Petition before the High Court of Madras against this order. In the Writ Petition the Respondents took the stand that the relief sought by the petitioner is not sustainable since he is a workman coming within the purview of Section-2(S) of the Industrial Disputes Act and the forum to decide the issue is the one under the Industrial Disputes Act. So the petitioner had withdrawn the Writ Petition and the Hon'ble Court had permitted the petitioner to approach the Labour Court. The matter has thereafter been raised before the Asstt. Labour Commissioner. On failure of conciliation the case has been referred to this Tribunal by the Government. The petitioner has not committed any misconduct as alleged. Only one ticket was issued to the petitioner for going to Delhi. The other ticket allegedly used by the petitioner was an invalid ticket and was issued some months ago. The petitioner himself could not have travelled on this invalid ticket. The ticket was not valid after July 21, 2008. The incident had taken place on 27.07.2008, after the validity period of the ticket. The petitioner had expired tickets with him and one such ticket had got mixed up with the ticket of Shanmugaiah accidently due to inadvertence. Shanmugaiah had a valid ticket on the relevant date. So there was no necessity for Shanmugaiah to utilize the invalid ticket for his travel. These facts were not considered while terminating the service of the petitioner. The termination of the petitioner from service is without any legal sanction. An order may be passed directing the Respondents to reinstate the petitioner in service with back wages and attendant benefits.

4. The Respondents have filed Counter Statement contending as follows :

The petitioner was enrolled as a Trainee Pilot with the Respondent. The petitioner had to undergo training and assessment as a Trainee Pilot at the Central Training Establishment, Secunderabad and also at the station of his posting, on successful completion of the training. After completion of the training he would be appointed as Second Officer on a fixed pay. Therefore he would be subjected to release checks on the aircraft and on successful completion of such release checks, he would be appointed as First Officer in the regular pay scale. Only on appointment as First Officer he would be treated as regular and permanent employee of the Company. Placement of the petitioner as Second Officer was the last phase of his training before being appointed on regular rolls as a First Officer. He was not entitled to be treated as an employee of the Company until he was placed on regular rolls in the applicable pay scale on being appointed as First Officer. When the petitioner was required to travel to Delhi for undergoing release checks and before being appointed as First Officer he had obtained Air Tickets from Hyderabad Office for his travel for the sector Hyderabad-Chennai-Delhi and also another ticket from Chennai Office for the sector Chennai-Delhi. After travelling from Hyderabad to Chennai by utilizing the first coupon from the ticket issued at Hyderabad, he had fraudulently utilized both the tickets which were in his possession i.e. the one issued at Hyderabad and another one issued at Chennai and had obtained two boarding passes in his name for travelling from Chennai to Delhi. He had given one of the boarding passes to one Mr. Shanmugaiah who was later revealed to be a fried of his father, for travelling from Chennai to Delhi by impersonating his name. The petitioner was caught red-handed while he was boarding the flight alongwith Shanmugaiah, on 27.07.2007. He was detained by the Officers of Indian Airlines Ltd. and Mr. Shanmugaiah had given a statement regarding the incident. The act of the petitioner was impersonation. After issuing a Show Cause Notice to the petitioner giving opportunity to him to give explanation the Executive Director of the Central Training Establishment had terminated the appointment of the petitioner as Trainee Pilot. As per the letter of enrolment for training issued to the petitioner the training and appointment program is liable to be terminated without any notice for reasons including unsatisfactory progress or behavior or any act of omission on the part of the petitioner which amounts to misconduct. The act of impersonation committed by the petitioner by allowing another person to travel under the ticket issued in his name amounts to grave misconduct. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of MWs 1 to 5 and documents marked as Ex.M1 to Ex.M39. The petitioner did not adduce any oral evidence nor mark any documents, though documents are seen produced on his side.

6. **The points for consideration are**:

(i) Whether the action of the management in terminating the services of the petitioner is legal and justified?

(ii) What is the relief, if any, to which the petitioner is entitled?

The Points

7. The facts of the case are not much in dispute. The petitioner had been enrolled as Trainee Pilot by the National Aviation Company of India Ltd. under Air India by order dated 14.02.2007 on the basis of his application, on 12.02.2007. He had furnished the necessary bank guarantee which was to be invoked in case of any breach of conditions of letter of enrolment as Trainee Pilot. According to the petitioner he has completed his training and was posted as Second Officer. It is admitted by the Respondents also that he was posted as a Second Officer. But according to them the posting as Second Officer was only the last phase of the training. According to them, only after he has completed the necessary release checks and is appointed as First Officer, he would become a regular employee.

8. On 27.07.2008 the petitioner was to travel by IC 802 from Chennai to Delhi. On the same day his father as well as a friend of his father had been travelling from Chennai to Delhi. The petitioner is the one who had obtained flight tickets for these two persons. It seems the petitioner had obtained two boarding passes in his own name, one using the ticket issued to him on 27.07.2008 and another one using the supernumerary ticket issued to him on an earlier date from Hyderabad. While his father and father's friend Shanmugaiah were at the gate for boarding the flight it was found out that Shanmugaiah is having the boarding pass in the name of the petitioner. He was offloaded consequently. The father of the petitioner also did not go by the flight as his friend was offloaded. The petitioner who had already boarded the flight was allowed to go by the flight. Subsequently, Show Cause Notice seems to have been issued to the petitioner. An explanation was given by him under what circumstances a second boarding pass happened to be issued in his own name rather than in the name of Shanmugaiah in whose name is the ticket. The Respondents rejected the explanation submitted by him and terminated the petitioner from service.

9. The petitioner has approached the High Court of Madras challenging the termination order. There the stand taken by the Respondents was that the petitioner is a workman coming under the purview of ID Act and therefore he is not entitled to any relief from the Hon'ble High Court. Consequent to this contention, the High Court had granted him permission to withdraw the Writ Petition with liberty to raise the Industrial Dispute. I have referred to this aspect for the reason that there is a contention for the Respondents in their Counter Statement that the petitioner being only a trainee has not become a regular employee and could not be called a workman coming under the purview of ID Act. The Respondents certainly could not blow hot and cold. The very Counter Statement filed before the High Court in the Writ Petition would amount to admission that the petitioner is a workman coming under the purview of ID Act. In fact not much argument has been advanced by the counsel for the Respondents on this aspect also.

10. The petitioner was terminated from service, or from his position as Trainee Pilot whatever is it, but it was without any departmental enquiry. The statements of some of the employees were recorded and on the basis of this a termination order was issued. The petitioner was not given any opportunity to defend his case. The petitioner has contended before this Court that his termination without a proper enquiry is not valid in law. Accepting this contention of the petitioner, this Tribunal had granted opportunity to the Respondents to prove the case of misconduct against the petitioner. It is in their attempt to substantiate the allegation of misconduct made against the petitioner, the Respondents had examined 5 witnesses and marked the documents.

11. MWs 1 to 4 are employees of the Respondents who were on duty at the airport on 27.07.2008, the date of the alleged incident. MW5 is the one who had preferred a report on the incident on the basis of the enquiry said to have been conducted by him.

12. What actually transpired on the day is revealed from the affidavits filed by the witnesses and their version during their cross-examination. MW1 is working in the capacity as Assistant Manager under the Respondents. The documents are marked through this witness. This witness has stated in the affidavit that the petitioner was required to travel to Delhi for undergoing release checks before being appointed as First Officer, he had resorted to obtaining tickets from Hyderabad office for travel for the sector Hyderabad-Chennai-Delhi and had also obtained another ticket from Chennai office for the sector Chennai-New Delhi. Ext.M3 is the letter given by the petitioner on 21.04.2008 for passage flight ticket and Ext.M4 is the ticket. On 27.07.2008 he was issued Ext.M5 passage ticket at Chennai. Ext.M6 and Ext.M7 are copies of tickets purchased by the petitioner on 27.07.2008 itself for his father and father's friend respectively for travelling from Chennai to Delhi by Flight No. IC-802. According to MW1, the petitioner had utilized the ticket issued to him from Hyderabad and also from Chennai and had obtained two boarding passes in his name i.e. S. Sharan for travelling from Chennai to Delhi. He had given one of the boarding passes in his name to Shanmugaiah who was later revealed to be the friend of his father. It is further stated by MW1 that the petitioner, while boarding the flight alongwith Shanmugaiah was caught red-handed by the Traffic Officer on duty. He was detained by the Officers. Shanmugaiah is said to have given a statement regarding the incident and this is marked as Ext.M9. However, this statement could not be referred to or relied upon since the Respondents

have not chosen to examine the said Shanmugaiah. MW1 has stated that the report filed by Vigilance Department would show that the petitioner had committed the act of impersonation by allowing Shanmugaiah to travel by the Boarding Pass in his name.

13. MW2 was working as Senior Traffic Assistant at the time of the incident. The statement of this witness is marked as Ext.M13. He has stated that he stands by his statement. As seen from his statement, on the day in question, he was given the duty of base coordination. According to him, immediately after 1'O clock, a casual employee from the Operations Department had approached him with an e-ticket issued in the name of the petitioner. He had contacted the flight dispatch and had come to know that the petitioner is travelling as Supernumerary (SNY). Accordingly, he had written SNY on the e-ticket and handed it over to the employee. However, later the Deputy Manager had contacted him and had told him that he should hold on the SNY advice for the petitioner. Later the Deputy Manager had informed him that the petitioner would be travelling as SoD (Staff on Duty) and not as SNY. He had removed the SNY remarks from the system. Later the Traffic Officer i.e. MW1 had contacted him and told him that two passengers with seat numbers 12F and 16F were yet to board the flight IC-802. He checked with the system and found that the ticket holder of Seat no. 16F was the petitioner who was travelling on SoD. On contacting the petitioner he was confirmed that the petitioner was already on board. However, by this time the two passengers had reported for boarding the flight, one with SoD boarding pass of the petitioner.

14. MW3 was working as Traffic Superintendent at the time of incident. Her statement is marked as Ext.M12. In her statement, she had stated that at around 1500 hrs. a casual employee had approached her for getting boarding pass for the petitioner and she had issued manual boarding pass, as seat number is not allotted to SNY boarding pass. She has further stated that at 1945 hrs. a person in uniform had approached her counter with two tickets, one paid ticket and an SoD ticket for checking on flight IC-802. She had issued boarding pass for the ticket in the name of Subramanian and also for the SoD ticket in the name of the petitioner.

15. MW4 was working as Sr. Accounts Superintendent during the period in question. Ext.M19 is his statement. It is stated in his statement that on 27.07.2008 by 1340 hrs. a pilot in uniform had been to the office and had enquired about the availability of highest and lowest fares for the sector Chennai-Delhi on flight IC-539 or IC-802. He had given the details and had issued the cheapest fare ticket in the name of Subramanian and a full fare economy class ticket in the name of Shanmugaiah. He has also stated that the Officer had gathered information regarding the refund on tickets also.

16. MW5 is the Chief Manager (Vigilance) and was the Investigation Officer of the Vigilance Department regarding the incident. Ext.M10 is the preliminary report submitted by him and Ext.M23 is the final report.

17. An analysis of the evidence would reveal a lot of contradictions. In the statement marked as Ext.M11, MW1 has stated that before announcing boarding he had observed a Trainee Pilot passing through Gate No. 2 in uniform with SNY Boarding Pass and the Traffic Officer Srikumar has confirmed his name as Saran, the petitioner. During his cross-examination what he has stated is that he came to know about the name of the petitioner by overhearing a conversation in the walkie-talkie and that at that time he did not even knew that it is petitioner who passed through the Gate. Only later he knew the name of the person. What he has stated in the Affidavit is that when the petitioner alongwith Shanmugaiah was boarding the flight he was caught red-handed by the Traffic Officer on duty at the boarding point. From this statement what is to be understood is that Shanmugaiah and the petitioner were together moving to the boarding point. However, the evidence reveal that the petitioner had already boarded the aircraft and that his father and Shanmugaiah were those remained. Of course the evidence given is that the two persons who were issued boarding pass remained to board the flight having been Saran and Subramanian, their names were repeatedly announced. However, it was not the case of the petitioner and the other two going together to board the flight.

18. As pointed out by the counsel for the petitioner Shanmugaiah who was alongwith the father of the petitioner never tried to conceal his name. He had given his actual name though the Boarding Pass showed the name of Saran. This gives some justification to the case of the petitioner that there was never any deliberate attempt on his part to use the expired ticket but it was only by inadvertence a Boarding Pass happened to be issued on an expired ticket in his name.

19. It could be seen from the statement given by MW2 marked as Ext.M13 that initially a SNY ticket has been issued to the petitioner. Subsequently, the Deputy Manager contacted him and told him to hold on the SNY advice for the petitioner and informed him that the petitioner would be travelling by SoD ticket.

20. The statement of MW3 is marked as Ext.M12. She is the one who had issued Boarding Pass on an expired ticket. She has stated in her statement that normally the validity period of the tickets will be verified. But according to her, in the case of SoD ticket the name and ticket number will be checked and Boarding Pass will be issued. According to her, she had issued Boarding Pass in the name of the petitioner on the strength of SoD status, though it was a lapsed one. From the statement one could not ascertain whether she had intended that she had even then noticed

the ticket to be a lapsed one and yet issued the Boarding Pass or whether it was done without noticing it. During cross-examination this witness has stated that even if the passenger is in uniform she will have to check the Identity Card. In fact it could be seen that had MW3 been more vigilant the entire incident could have been avoided. She is the one who is to issue Boarding Pass on the basis of the ticket. She is entitled to issue Boarding Pass only if the ticket is valid. It is for her to verify and assure herself that she is issuing the Boarding Pass on a proper ticket only.

21. It has been pointed out on behalf of the petitioner that the ticket having been an expired one, the petitioner could not have even expected to get a Boarding Pass based on the ticket. If that is so, there is no possibility of his knowingly handing over an invalid ticket to her for issuing Boarding Pass. It is to be borne in mind that the same Officer has issued the SNY ticket in the same name also. What is to be understood from her own statement is that she had some difficulty in making entry in the system in respect of the Boarding Pass for the expired ticket, but yet she was not vigilant enough to make further verification. In spite of this lapse on the part of MW3 not even a memo is seen issued to her.

22. MW4 had issued the tickets. This witness has been examined to show that the petitioner, while obtaining the tickets, had enquired about the cheapest fare available along with that the refundability of the full fare ticket also. This aspect has been much projected on behalf of the Respondent to show that even at that time the petitioner had intention to get Boarding Pass on the expired ticket and retain the ticket purchased by him to get a refund later as if it was not used. However, it is revealed from the version during cross-examination that it is his duty to inform passengers about the fare and other details. He has stated that generally passengers used to enquire about the fare, cancellation charges, re-scheduling charges, etc. He also stated that before issuing the tickets he will brief the passengers regarding cancellation, change of date, refund, etc. and that it is normal for a passenger to enquire about cancelling, re-scheduling and refund charges. So there was nothing unusual in the petitioner making such enquiries. During cross-examination he has stated that he does not remember if the person in uniform who purchased the tickets had enquired about other flights. However, his statement reveal that the petitioner was enquiring about availability of other flight also and not IC-802 only.

23. MW5, the Vigilance Officer had stated that Boarding Pass cannot be issued on expired ticket. The preliminary report given by this witness and marked as Ext.M10 states that when at the boarding point it was found that passenger Shanmugaiah was holding a Boarding Pass issued in the name of the petitioner whereas the petitioner had boarded the aircraft based on a SNY Boarding Pass, the father of the petitioner had contacted him and he had immediately sent the ticket in the name of the petitioner through the Duty Officer. The report also shows that the petitioner was allowed to travel on his SoD ticket by the same flight in spite of the incident.

24. The main argument that is advanced against the petitioner is that he had obtained the open ticket in the name of Shanmugaiah while he had obtained a cheaper one for his father and this was with the intention of getting a refund producing the ticket later. The explanation of the petitioner seems to be that the journey of Shanmugaiah was not certain while his father was certain to travel and that is why an open ticket was obtained. According to him, he had obtained the tickets much earlier, even before he was deputed for duty by the said flight. It is revealed from the evidence that even after all the passengers had boarded the flight Shanmugaiah and the father of the petitioner had not reached the boarding gate and announcement of the names of the passengers had to be made. This probably would show that the two passengers had reached the airport only much later, probably because Shanmugaiah reached later. It has been pointed out on behalf of the petitioner that if it was an intentional attempt of deception it was not necessary for him to obtain tickets for himself and also for other two passengers from the same counter i.e from the counter of MW3 when several other counters were also available for the flight from where Boarding Pass could have been obtained.

25. It has been alleged by the Respondent that the petitioner had obtained two tickets for the same examination, had been retaining one of them and had been trying to misuse it. It has been pointed out based on documents that this could not be correct at all. Ex.M3 is the copy of the letter written by the petitioner to the Executive Director stating that he is to attend ATPL examination for the April session and he may be allowed to travel SNY from Chennai to Delhi to attend the examination. Ext.M4 is the ticket that was issued to him for this purpose from Hyderabad to travel by Hyderabad-Chennai-Delhi sector. The allegation made against the petitioner is that he obtained one more ticket from Chennai for the same purpose and misused it. On the other hand there is no evidence to show that he had obtained another ticket from Chennai also for the same purpose. Ext.M5 is the SoD ticket issued to him on 27.07.2008, the date of the incident for his SO3 check as seen from Ext.M23, Page 53. So there is absolutely no basis for the contention that two tickets were issued for the same purpose.

26. Though it is Shanmugaiah who had been at the Boarding Gate with the boarding pass in the name of the petitioner, he has not been brought to the witness box. A statement said to be his has been marked. However, this could not be considered in the absence of his examination. It is pointed out by the petitioner that the very case that the statement of Shanmugaiah has been taken could not

be believed. The date of the statement is shown as 27.07.2008 at 2330 hrs. On the other hand, what MW1 has stated is that after Shanmugaiah was off-loaded, the petitioner, his father and Shanmugaiah left the place. MW1 himself came to know about it by 0930 PM. In that case there was no possibility of statement of Shanmugaiah being recorded at 2330 hrs.

27. How can the petitioner expect that a boarding pass will be issued in his name based on an expired ticket? It is clear that he had not taken Shanmugaiah to faith even if he had the mal-intention. This is clear from the fact that Shanmugaiah, immediately on asking, had given his name. A person who is travelling by flight is expected to travel by his Identity Card. This will be checked before he is allowed to board the flight. How can the petitioner expect that Shanmugaiah will pass through the gate and enter the flight without any such checking? When these aspects are taken into account it is more than probable that the petitioner who was having an expired ticket in his bag handed it over to MW3 for getting boarding pass and she inadvertently issued the boarding pass on the expired ticket. If the act of MW3 was treated as an inadvertence why not that of the petitioner? The petitioner was in a hurry to get the boarding pass for his father and his friend and also to board the flight himself. It is probable that in his hurry, rather than the right ticket he picked up the invalid ticket and handed it over to MW3. When such a possibility is also there it will not be proper to hold that the petitioner had deliberately and intentionally had been trying to misuse the invalid ticket for his own gain. When such an interpretation in favour of the petitioner is possible, it is not proper to nail him with the alleged misconduct. He should be entitled to the benefit of doubt. The Apex Court has held that when misconduct amounting to the nature of a criminal offence is attributed, there is a duty cast upon the management to prove it beyond doubt in the departmental enquiry. I find that the management has not clinchingly established the charge alleged against the petitioner. He is therefore entitled to be reinstated in service.

28. The petitioner has claimed back wages and other benefits on reinstatement. Considering the circumstances, I am not inclined to allow back wages.

In view of my discussion above, an order is passed as follows :

"The Respondents shall reinstate the petitioner in service within one month with continuity of service".

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st February, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	:	None
For the 2nd Party/ Management	:	MW1, Sri M. Arvind MW2, Sri V. Saravana Balasubramanian MW3, Ms. R. Vijayalakshmi MW4, Sri S. Maruthachalam MW5, Sri T. R. Rajagopalan

Documents Marked

On the side of the Petitioner

Ex. No.	Date	Description
	Nil	

On the side of the Management

Ex. No.	Date	Description
Ex.M1	12.02.2007	Application of petitioner for Trainee Pilot
Ex.M2	14.02.2007	Recruitment order issued to petitioner as Trainee Pilot
Ex.M3	21.04.2008	Petitioner letter to the Respondent for passage Flight Ticket
Ex.M4	-	Flight ticket issued to petitioner Hyderabad/Chennai/Delhi at Hyderabad
Ex.M5	27.07.2008	Authority for issue of (staff on duty) passage obtained by Petitioner at Chennai
Ex.M6	27.07.2008	Ticket purchased in the name of petitioner's father (IC-802)
Ex.M7	27.07.2008	Ticket purchased in the name of petitioner's father's friend/uncle (open ticket)
Ex.M8	-	Boarding passes obtained by the petitioner
Ex.M9	27.07.2008	Statement of P. Shanmugaiah (Petitioner's father's friend)
Ex.M10	28.07.2008	Preliminary report of Vigilance Department
Ex.M11	29.07.2008	Statement of M. Arvind, Traffic Officer
Ex.M12	29.07.2008	Statement of Vijayalakshmi, Sr. Traffic Assistant
Ex.M13	30.07.2008	Statement of V. Saravana Balasubramanian, Sr. Traffic Assistant

Ex.M14	30.07.2008	Statement of C.P. Arun Kumar, Assistant Manager
Ex.M15	30.07.2008	Statement of Sreekumar, Traffic Officer
Ex.M16	01.08.2008	Statement of G. Harikrishnan, Casual
Ex.M17	01.08.2008	Statement of S. Saran
Ex.M18	02.08.2008	Statement of S. Saran
Ex.M19	02.08.2008	Statement of S. Marudhachalam, Sr. Accounts Supdt.
Ex.M20	21.08.2008	Statement of V. Gunaseelan, Manager (FO)
Ex.M21	22.08.2008	Statement of V. Gunaseelan, Manager (FO)
Ex.M22	07.09.2008	Statement of Saju Menon, Sr. Operations Assistant
Ex.M23	10.09.2008	Vigilance Report
Ex.M24	05/16.12.2008	Show Cause Notice issued to petitioner
Ex.M25	23.12.2008	Petitioner letter seeking documents
Ex.M26	25.12.2008	Explanation of petitioner
Ex.M27	16.01.2009	Respondent letter enclosing documents
Ex.M28	27.01.2009	Petitioner request for extension of time to submit reply
Ex.M29	05.02.2009	Additional explanation submitted by petitioner
Ex.M30	19.02.2009	Termination order issued to petitioner
Ex.M31	25.02.2009	Appeal filed by the petitioner
Ex.M32	July 2009	Affidavit in WP No. 14449 of 2009
Ex.M33	03.09.2009	Counter Affidavit of Respondent in WP No. 14449 of 2009
Ex.M34	14.10.2009	Order in WP No. 14449 of 2009
Ex.M35	20.07.2010	Order of Appellate Authority
Ex.M36	August 2010	Affidavit in WP No. 19763 of 2010
Ex.M37	10.08.2010	Counter Affidavit in WP No. 19763 of 2010
Ex.M38	28.07.2011	Petitioner letter to respondent to accept his resignation without prejudice to WP No. 19763 of 2010
Ex.M39	03.01.2012	Order in WP No. 19763 of 2010

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.